

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 241 OF 2017

Manik Sahebrao Chaugule

...Applicant

Versus

The State of Maharashtra

...Respondent

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Mr.Aniket Nikam i/b. Mr.Chetan S. Damre for the Applicant.

Mr.Deepak Thakre, APP for the State-Respondent.

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CORAM: MRS. MRIDULA BHATKAR, J.

DATE : MARCH 23, 2017

P.C.

1. This bail application is made under section 167 (2) of the Code of Criminal Procedure in connection with C.R. bearing No. 437 of 2016 registered with Pandharpur Taluka Police Station, District- Solapur. The applicant-accused is prosecuted for the offences punishable under sections 8(c), 20 and 29 of the N.D.P.S. Act.

2. Pursuant to the statement dated 8th July 2016 of one Nitendra Deokate, Police Constable, Buckle No. 419 the offence was registered against the applicant-accused. On 8th July 2016, the police of Pandharpur Taluka Police Station had received a secret information that one Cruiser Jeep No. MH-13-AC-9656 carrying Ganja was proceeding from Solapur via Mohol to Pandharpur. Therefore, the police laid a trap

near Mohol-Pandharpur Road and at around 14.45 hours as soon as they spotted a Jeep, they stopped the said Jeep. On search of the said Jeep, they found 147 *khakhi* colour pockets with Ganja of 307 kg. The applicant-accused Manik Sahebrao Chaugule was a driver of the said Jeep. He was arrested on the spot. The police have seized the Ganja and took samples from the said Ganja and sealed it. Since then, the applicant-accused is behind the bars. Hence, this bail application.

3. The learned counsel for the applicant-accused submits that the police has filed the chargesheet on 3rd September 2016. After filing of the chargesheet, the applicant-accused has filed one application for bail on 22nd September 2016, however, it was rejected on 30th November 2016. Thereafter, the applicant-accused has filed another application for bail on the ground that the chargesheet has been filed within stipulated time, but it was incomplete without report of Chemical Analyzer and therefore, he is entitled for bail under section 167 (2) of Cr.P.C.

4. The learned APP, while opposing this application, relied on the affidavit of Vikram Gawade, PSI, Pandharpur Taluka Police Station and also relied on the order dated 17th January 2017 passed by the learned Additional Sessions Judge, Pandharpur rejecting the bail application.

He submits that the learned Additional Sessions Judge, Pandharpur has referred the ruling of the Bombay High Court in the case ***Sunil Vasantrao Phulbande Vs. State of Maharashtra*** reported in **2002 (3) Mh. L.J 689** and also the order dated 14th July 2014 in ***Criminal Bail Application No. 509 of 2014 (Ranjeet Manohar Machrekar Vs. The State of Maharashtra)*** and has still taken a view that the filing of the chargesheet within stipulated time without report of Chemical Analyzer under N.D.PS.Act will not help the accused to get the benefit under section 167 (2) of Cr.PC.

5. Perused the order and the judgment of ***Ranjeet Machrekar*** (supra) and also the judgment of ***Rafael Palafox Garcia Vs. Union of India & Anr. reported in 2009 CRI. L.J.446.*** These are two other cases in respect of N.D.PS., where the issue that, benefit of bail under section 167 (2) of Cr.PC was to be extended to accused or not, is dealt with. In case of ***Rafael Palafox Garcia*** (supra), this Court has observed that under N.D.PS. Act the samples were tested on the spot by field testing kit and the report of the material was positive for presence of pseudoephedrine which is a controlled substance under N.D.PS.Act and thereafter, the chargesheet was filed within stipulated time without report of Chemical Analyzer. However, there was already the report of the field testing kit and therefore benefit under section 167 (2) of Cr.PC. cannot be extended.

6. In a similar case, ***Ranjeet Manohar Machrekar*** (supra) was prosecuted under section 20 (b) of N.D.PS Act. When the chargesheet was filed, it was without report of the Chemical Analyzer. The learned Single Judge of this Court has considered that section 167 (2) of Cr.P.C. does not speak about the filing of the chargesheet, but refers to the completion of investigation. It is further explained that without collection of any evidence i.e. report of Chemical Analyzer, how the investigation in respect of psychotropic substances could be said to be completed in the absence of such Chemical Analyzer's report, where the material is seized and then the chargesheet is filed in the Court. The investigation was not completed for want of evidence on most vital aspect of the prosecution case and then the bail was allowed to the accused under section 167 (2) of Cr.P.C, as modified by sub-section (4) of Section 36A of the N.D.PS.. The present case is identical and therefore the ratio laid down in the ***Ranjeet Machrekar***(supra) is squarely applicable to the present case. In the present case also the chargesheet is filed without report of Chemical Analyzer.

7. Perused the affidavit dated 9th March 2017 filed by Vikram Sitaram Gawde, Police Sub Inspector, Pandharpur Taluka Police Station, Taluka- Pandharpur, District-Solapur which is completely silent on this issue and therefore, I grant bail to the applicant-accused on the following terms and conditions:

ORDER

- a) The applicant-accused shall be released on bail upon furnishing P.R. Bond in a sum of Rs.50,000/- (Rupees Fifty Thousand only) with one or two solvent sureties in the like amount.
 - b) The applicant-accused shall not tamper with the evidence or pressurise the witnesses.
 - c) The applicant-accused shall not indulge into any criminal activity and shall attend on all the Court dates.
 - d) The applicant-accused shall not abscond or leave India without prior permission of the Court and furnish his permanent address to the Investigating Officer alongwith documentary proof of his address.
 - e) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.
8. Bail Application is disposed of on the above terms.

(MRIDULA BHATKAR, J.)