

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1159 OF 2016

Mohammad Iqbal Khan	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Ashish B. Baraskar, Advocate for the applicant.
Mrs. P.P.Shinde, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 4th January, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 25.3.2015 in Crime No.29 of 2015 registered at Kalwa Police Station for the offences punishable under Sections 8(c) and 20 of the Narcotic Drugs and Psychotropic Substances Act ("NDPS Act" for short). The investigation is completed and charge-sheet is filed.

2. It is the case of the prosecution that on 25.3.2015, the police of Anti-Narcotic Cell had received a secret information that on that day at about 5.30 p.m., one person would be coming towards Bhaskar Nagar Road. The description of the wearing apparel of the person was given. It was further informed that he would be carrying the contraband (ganja) in a

black coloured bag and would come to the said area for selling the same. On the basis of the said information, the police of Kalwa had arranged a trap. They apprehended the applicant and had seized the contraband of about 22.9.kgs from a bag which he was carrying. On the said day, Pritam Bhogle lodged a report at the police station in respect of the said incident. It was reported that the contraband was worth Rs.2,29,000/-. In the first information report itself, the informant had mentioned all the steps taken by the prosecution. The applicant was taken into custody. At the behest of the applicant, the house search panchnama was conducted and in the said house search panchnama, the police had seized contraband ganja weighing about 12 kgs and 300 grams.

3. The learned counsel for the applicant vehemently submits that in the present case, there has been non-compliance of Sections 42 and 50 of the NDPS Act which are mandatory in nature and in view of the same, the applicant deserves to be enlarged on bail. It is submitted that a panchnama was recorded in respect of compliance of Section 50 of the NDPS Act. However, there is no mention that the applicant had a right to be taken to the nearest Magistrate and all that is mentioned is that he has a right to be taken to the nearest Gazetted Officer and hence there is non-compliance of

section 50 of the NDPS Act. It is also vehemently submitted that the secret information which was received was not communicated to the immediate superior within 72 hours as contemplated under Section 42 of the NDPS Act.

4. This Court is of the opinion that the said issues in respect of compliance of Sections 42 and 50 of the NDPS Act need to be determined at the stage of trial only after the prosecution is given a fair chance to explain the lacunas in the investigation. The said lacunas can be tested by cross-examination. The prosecution also deserves an opportunity to explain before the Court as to whether the investigating agency has followed the mandatory provisions or not. At this stage, the said issues cannot be gone into. Moreover, at the time of arrest, commercial quantity of 22.9 kgs. of contraband was found with the applicant. Huge quantity was also found in the house of the applicant and there is no plausible explanation for the same. All this would be sufficient material to indicate that the applicant had stocked the contraband and was trading in the same. Hence, the applicant does not deserve to be enlarged on bail at this stage.

5. The applicant being sans merits, stands rejected.

(SMT. SADHANA S.JADHAV, J.)