IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION No. 1269 OF 2016

Rajesh Govind Patel ... Applicant
Vs.
The State of Maharashtra ... Respondent

Mr. Taraq Sayyed, Advocate for the applicant.
Ms. Purnima H. Kantharia, Spl. P.P. a/w. Mr. Prashant Jadhav, APP for the State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: 25th January, 2017.

P.C.:

This Bail Application is filed by the applicant/accused under section 439 of Cr.P.C. The applicant/accused is prosecuted for the offences punishable under sections 20(2)(B) and 22(B) of Narcotic Drugs and Psychotropic Substances Act, 1985 in C.R. No. 23 of 2016 registered with Nani Daman Police Station.

2. One Uday Ramchandra Kale, Police Sub-Inspector has lodged complaint against the applicant/accused. On the basis of secret information, they along with 2 panchas and police personnel went to the house of the applicant/accused at Dalwada, Prakash Faliya and took search of his house. They found a steel container below the cot wherein ganja was packed in plastic bags. The said ganja was kept illegally and for selling. The ganja was weighed and found to be 1 kg 60 gms. and it

was seized under panchnama in the presence of two panchas. The applicant/accused was arrested on 15th February, 2016. Hence, this Bail Application.

3. The learned counsel for the applicant/accused has submitted that for commercial purpose, ganja should be of 20 kgs. and above and for small quantity, ganja is required to be 1 kg. However, in the present case, ganja was found to be 1 kg 60 gms. and therefore, section 37 of N.D.P.S. Act is not attracted. The learned counsel further submitted that the samples which were sent to Forensic Lab was not collected under the panchnama. He submitted that the applicant/accused is in prison since last one year and there is no possibility of commencement of his trial in near future in view of pendency of cases. He submitted that as on today, charge in 2013 cases are framed.

4. Learned Spl. PP opposed the Application. She submitted that ganja was seized from the house of applicant/accused, thus, the applicant was caught red-handed. Moreover, the quantity of ganja is more than the small quantity. Hence, this Bail Application is to be rejected.

5. Considered the submissions made by both the counsel and perused all the documents produced herein. The submissions of learned counsel

for the applicant/accused that sample of ganja was not collected under panchnama, is correct. In the statement of Tazdin Dinmohammed Patel wherein he has stated that ganja was weighed in his weighing scale and in the presence of two panchas something like ganja in plastic bag was removed and weighed and thereafter 50 gms was separated for the purpose of sample and was sealed and the remaining ganja was also sealed. Though the statement was recorded, there is no separate panchnama of weighing and taking sample of ganja. I am of the view that *prima facie* this may affect the authenticity of the report of Chemical Analyzer. Moreover, the applicant/accused does not have any criminal record. In view of this and the facts mentioned herein, I am inclined to grant bail to the applicant/accused on the following terms and conditions:

O R D E R

(i) Application is allowed.

(ii) The applicant/accused be enlarged on bail on furnishing P.R. Bond in a sum of Rs.50,000/- with one or two sureties in the like amount;

(iii) The applicant shall attend all the Court dates.

(iv) The applicant 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;

(v) 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.

6. The Application for bail stands disposed of on above terms.

(MRIDULA BHATKAR, J.)