

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (ABA) NO.815 OF 2016

Sayed Maulla s/o Sayed Ali

..VS..

State of Maharashtra, through Police Station Officer, Police Station, Pittiguda,
District Chandrapur

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri A.B. Mirza, Counsel for the applicant.
Shri S.S. Doifode, Addl.P.P. for the non-applicant.

CORAM : P.N. DESHMUKH, J.
DATED : FEBRUARY 27, 2017.

This application is filed by accused involved in Crime No.25 of 2016 registered for the offences punishable under Sections 20 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "*the said Act*").

Heard learned counsel for the applicant and learned Additional Public Prosecutor.

It is submitted that applicant is falsely involved as in fact he is not owner nor in possession of piece of land where from four Ganja plants are alleged to have been recovered. In support of his case, applicant has relied upon certificate issued by Talathi of Saja No.8, Nandppa, Taluka Jiwati and has submitted that said revenue officer had certified that no land is owned by applicant in the village though he is resident

thereof. It is, therefore, submitted that application is liable to be allowed as even otherwise there is no compliance of mandatory provisions of Section 42(1)(2) of the said Act as there is nothing to establish that information, alleged to have been received by police having been reduced into writing, was forwarded to the immediate superior officer within seventy-two hours. It is thus prayed that application be allowed.

Learned Additional Public Prosecutor has opposed application on the ground that as per certificate issued by same revenue officer, applicant though is stated to have no land at his credit, is certified to have encroached upon the Government land and had indulged in Ganja plantation. It is, therefore, submitted that application be rejected.

Admittedly, case of prosecution is based on information received by Police Sub Inspector, attached to Sub Police Station, Pittiguda, District Chandrapur on 6.11.2016, involving applicant to have cultivated Ganja plants in his field. Accordingly, raid came to be carried out in one field which was stated to be owned by applicant by his nephew Sher Khan. On obtaining search of said field, four Ganja plants were found cultivated which came to be seized, weighing 6.29 kilograms.

On going through case diary made available by learned Additional Public Prosecutor it appears that though there is compliance of Section 42(1) of the said

Act, there appears no satisfactory compliance of Section 42(2) of the said Act. Thus, it is noted that there is partial compliance of Section 42 of the said Act which provisions is mandatory in nature.

In that view of the matter and *prima facie* from the statement of Talathi as it is found that applicant does not possess any agricultural land in his name and as contraband Ganja involved in this crime though is above small quantity is below commercial quantity, application is liable to be allowed by confirming interim order of this dated 16.12.2016 on the same terms and conditions with a further direction to applicant to mark presence with investigating officer as and when called, till filing of charge-sheet.

JUDGE

!! BRW !!

C E R T I F I C A T E

I certify that this Order/Judgment uploaded is a true and correct copy of original signed Order.

Uploaded by : Bhushan R.Wankhede.
(Personal Assistant)

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