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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION No. 2505 OF 2017

Rajesh Shyam Chavan	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

WITH
BAIL APPLICATION No. 2506 OF 2017

Sachin N. Nichal	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Aniket U. Nikam i/b Aashish Satpute, for Applicant.

Mr. S. R. Agarkar, APP for the Respondent – State.

Mr. Rajendra A. Magdum, API, Tembhorni Police Station, Solapur
(Rural) – Present.

CORAM : P. N. DESHMUKH, J.

DATE : APRIL 13, 2018

PC :-

1. As both these applications are arising out of the same crime registered by Tembhorni Police Station, for the sake of convenience, both applications are heard together and decided by this common order. Heard learned counsel for Applicant and learned APP

for Respondent State. Perused copy of the charge-sheet. By both the applications, Applicants have sought bail in C. R. No. 289/2017 registered by Tembhurni Police Station, district Solapur for the offence punishable under Section 20(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the “NDPS Act”).

2. Learned counsel for Applicants submits that in the entire charge-sheet the only involvement of Applicants is based on statement of co-accused – Rahul Shinde, Swapnil Gaikwad and Yogendra Virkar and nothing else. It is further contended that except this inadmissible evidence on record, even when the case of prosecution is considered on merits, there is no compliance of mandatory provisions of Section 42(1) and (2) and Section 50 of the NDPS Act, and has thus contended that in view of facts aforesaid, there is no purpose in keeping Applicants behind the bar, and therefore, contended that both applications be allowed.

3. Learned APP has opposed applications on the ground that there is compliance of mandatory provisions of the NDPS Act, required to be followed by the investigating agency and that

involvement of Applicants is established from the statement of co-accused. Admittedly, no further involvement of Applicants can be established by learned APP. It is therefore, contended that since there is specific compliance of mandatory provisions, application may not be allowed.

4. Admittedly, case of prosecution appears to be based on information received by Police Naik, B. No. 1793 Sukhdev Gangane, attached to Tembhurni Police Station on 17.7.2017. He received information from informant of transport of Ganja in vehicle bearing registration No. MH-42 V-3030 at Akluj Chowk, Tembhurni. Prosecution for establishing compliance under Section 42(1)(2) relied upon entry in the station diary (page 30 to Application) dated 17.7.2017 made by Police Naik Gangane. According this document, it is stated that on receipt of information, he communicated this information to Senior Inspector of Police. Entry in station diary is silent with reference to mode of information given to Senior Inspector of Police. For that purpose, learned APP referred to document at page 41 of the application. Perusal of contents of this document reveals that same is addressed by Police Naik Gangane to Sub-Divisional Officer,

Karmala Division, Karmala, Solapur (Rural) stating therein that information received by Police Naik Gangane has been communicated by Police Inspector A. T. Khabare to the S.D.P.O. Perusal of both these documents i.e. station diary entry and document of communication (page 41 to the application) when considered do not establish compliance of Section 42 (1) and (2) of NDPS Act, as from contents of these documents it could not be established that information reduced into writing by Police Naik Gangane was communicated to his immediate superior officer within seventy-two hours from the receipt of information. Therefore, it is noted that there is total non compliance of Section 42(2) of the NDPS Act though from the document at page 29 there appears substantial compliance of Section 42(1) of the said Act.

5. Though it is the case of prosecution that contraband Ganja was recovered from the car, wherefrom the quantity of Kg. 46, 830 gms. Ganja came to be recovered. From the contents of report as well as seizure panchama, it reveal that before obtaining search of the car, personal search of co-accused who were occupying the same was obtained. Perusal of FIR as well as seizure panchanama, however,

reveal that while appraising co-accused of their right to search, what was appraised to them was whether they intend to have personal search in presence of gazetted officer or magistrate, neither of these documents establish that co-accused were appraised of their right to search as required under the law i.e. before gazetted officer or executive magistrate. In the circumstance, there is also non-compliance of Section 50 of the said Act.

6. Case of Applicants of their involvement in the crime is even otherwise based on the statement of co-accused made to police which is substantiated from the remand report filed in respect of co-accused Rahul Shinde, Swapnil Gaikwad and Yogendra Virkar. From this report, it is material to note that all these co-accused are arrested on 18.7.2017 and their police custody remand was granted till 21.7.2017. During their custody period, on 19.7.2017 they made statement to police involving Applicants. Except for this involvement of Applicants as aforesaid which is inadmissible in law, there is no evidence against Applicants. In that view of the matter, applications are liable to be allowed by imposing suitable conditions. Hence, the following order:

- (i) Applicant – Rajesh Shyam Chavan (in Bail Application No. 2505/2017) and Applicant Sachin N. Nichal (in Bail Application No. 2506/2017), both arising from C. R. No. 289/2017 registered by Tembhurni Police Station, district Solapur, shall be released on bail on their furnishing PR bond in the sum of Rs.50,000/- each with one surety each in the like amount;
- (ii) Both the Applicants shall mark their presence with Tembhurni Police Station on the first day of each month pending trial and except for marking presence and attending the trial, shall not enter territorial jurisdiction of Solapur district, pending trial.
- (iii) Trial Court shall not get influenced by any of the observations made herein and shall independently evaluate evidence at the time of trial.

Sd/-
[P. N. DESHMUKH, J.]