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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL BAIL APPLICATION NO.841 OF 2018

Shamsuddin Ainuddin Pinjari

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.Ejaaz N. Shaikh, for the Applicant.

Mr.Vinod Chate, A.P.P for the Respondent-State.

API - Sachin Wangade.

***CORAM : REVATI MOHITE DERE, J
DATE : 28th JUNE, 2018
(IN CHAMBERS)***

P.C. :

1. This is the second bail application preferred by the applicant, seeking his enlargement on bail in connection with C.R.No.II-19 of 2015, registered with the Pawarwadi Police Station, Malegaon, District – Nashik, for the alleged offences punishable under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'N.D.P.S. Act').

2. Mr. Shaikh, learned counsel for the Applicant, submits that despite the order dated 11th March, 2016, the trial has not concluded, within one year. He submitted that pursuant to the liberty granted by this Court vide order dated 11th March, 2016, that the present application has been filed. He further relied on the order of this Court passed in Bail Application No.2522 of 2014, in support of his submission, that the articles seized could not be said to be *ganja* falling within the definition of Section 2(iii) (b) of the N.D.P.S Act. He submitted that the applicant's wife has expired and that he has a son aged 8 years also suffering from AIDS.

3. Learned APP opposed the application. He submitted that no interference was warranted considering the fact, that the applicant's earlier bail application was rejected on merits. He submitted that there is no change of circumstance warranting any interference in the earlier order.

4. Perused the papers. The applicant had filed Criminal Application No.66 of 2016, in this Court, seeking his enlargement on bail. The said application was rejected by this Court (Coram:Revati Mohite Dere, J.) vide order dated 11th March, 2016. The said application was

rejected on merits after considering all the submissions of the applicant, including the submission, that the *ganja* that was seized was not of commercial quantity and that the bar of Section 37 of the NDPS Act would not apply. It is pertinent to note that pursuant to the order dated 11th March, 2016, charge was framed by the trial Court as against the applicant on 18th March, 2016. It is also pertinent to note that the order dated 11th March, 2016, rejecting the applicant's application for bail, was never placed before the learned Additional Sessions Judge, Malegaon. Vide the said order dated 11th March, 2016, the applicant was granted liberty to renew his prayer for bail, if the trial did not conclude within one year. Pursuant to the liberty granted, the present application has been filed.

5. It is pertinent to note that after the charge was framed on 18th March, 2016, the applicant filed two bail applications before the learned Additional Sessions Judge, Malegaon, i.e. on 3rd May, 2016 and 3rd July, 2017. Both these applications were rejected by the learned Additional Sessions Judge, Malegaon. A perusal of both these applications dated 3rd May, 2016 and 3rd July, 2017, filed by the applicant before the learned Additional Sessions Judge, Malegaon, show that the applicant had not

mentioned the rejection of his bail application by this Court on 11th March, 2016. Not only the applicant had failed to bring the same to the notice of the learned Additional Sessions Judge, Malegaon, but had also suppressed the same in both the bail applications preferred by him on 3rd May, 2016 and 3rd July, 2017.

6. Perused the order dated 25th March, 2015, passed in Bail Application No.2522 of 2014 relied upon by the learned counsel for the applicant, by which the applicant therein was granted bail as there was a discrepancy in the panchanama and the C.A. Report. There is no such discrepancy in the present case.

7. The learned APP has tendered the C.A. Report, which shows that what was found was greenish flowering tops, leaves, seeds and stalks and that on examination the same was found to be *ganja*. Though, the *ganja* seized (7 kgs) is not commercial quantity nevertheless the offence with which the applicant is charged is punishable with imprisonment for a term which may extend upto 10 years. One of the consideration for rejection of the applicant's earlier bail application was that he was earlier

involved in a similar offence, which was registered in 2012.

8. Considering the aforesaid, no new ground is made out for grant of bail. The application stands rejected. However, the trial of the applicant is expedited. Considering the fact, that the applicant and his son are suffering from AIDS, the learned Judge to decide the said case being Special (NDPS) Case No. 01 of 2015, as expeditiously as possible and in any event within three months from the date of receipt of this order.

9. Registry to forthwith communicate this order by fax to the Additional Sessions Judge, Malegaon, who is seized of the said case. Learned Counsel for the Applicant also undertakes to communicate the said order to the Additional Sessions Judge, Malegaon, who is seized of the said case.

10. Learned APP assures that the applicant would be produced on all the dates given by the Trial Court. Learned APP also undertakes to file the C.A.Report before the trial Court, at the earliest and in any event within two weeks from today.

11. At this stage, learned counsel for the applicant states that the co-accused in the present case, who are on bail, fail to remain present on the dates given by the trial Court. Needless to state, that it is open for the learned Additional Sessions Judge, Malegaon, to take appropriate steps/recourse to secure their presence, in case they fail to appear on the dates given by the Court.

12. The Application is disposed of in above terms.

13. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)