

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

BAIL APPLICATION No. 2123 of 2018.

Ashoray J. Fariya	..Applicant.
Vs	
State of Maharashtra	..Respondent.

**WITH
BAIL APPLICATION No. 1666 of 2018**

Jony Minino Kulaso	..Applicant.
Vs	
State of Maharashtra	..Respondent.

Mr. Dilip Mishra for Applicant in ABA/2123/2018.
Mr. Ayaz Khan for Applicant in ABA/1666/2018.
Mr. S.R.Agarkar, APP for the State.
Mr. D.R.Mohite, P.S.I. Bhartiya Vidyapeeth P.S.Pune present.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATE : 26TH SEPTEMBER, 2018**

P.C:-

- 1) These applications under Section 439 of Criminal Procedure Code are filed by the aforesaid applicants who have been arrested in N.D.P.S. Sessions Case No. 17 of 2018, pending before the learned Additional Sessions Judge, Pune, arising out of C.R. No.115 of 2018, registered at Bhartiya Vidyapeeth Police Station Pune for offences punishable under Section 20(B) (ii), (b) of the Narcotics and Psychotropic Substances Act, (NDPS Act).
- 2) Heard Mr. Ayaz Khan and Dilip Mishra, learned

counsel for the applicants and Mr. Agarkar, learned APP for the State. Perused the records and considered the submissions advanced by the learned Counsels for the respective parties.

3) The aforesaid crime was registered, pursuant to the first information report lodged by Vikas Bhujbal, A.P.I., attached to Bharti Vidyapeeth, Traffic Branch, Pune City. The FIR, prima facie, indicates that the first informant was on patrolling duty on 6th March, 2018. He had seen car No. GA-09-D-7868 coming from Swargate and stopped before Zebra crossing signal at Katraj bypass chowk. There were four persons in the said car. He suspected that something was amiss and told the driver of the said car to stop the vehicle, however the said car proceeded further. The first informant along with police staff chased the said vehicle by two-wheelers and caused to stop the said vehicle near Gandharva lawns Mangal Karyalaya. They verified the documents and told occupants as well as the driver to get out of the car. He has further stated that two occupants as well as the driver to get out of the car. He has further stated that two occupants of the said car managed to run away. He told the driver and the other occupants to open the dicky. One bag was found in the dicky. The said bag contained some strong

smelling material and when questioned, the said two persons informed that the bag contained Ganja. Case of the prosecution is that upon completing all the formalities they had seized the said bags which contains 6 kgs and 900 grams of Ganja. Samples of the same were taken in presence of panchas.

4) The applicants being the driver and the occupant of the said car was placed under arrest on 7/3/2018. It is to be noted that investigation has been completed and charge-sheet has already been filed before the Additional Sessions Judge, Pune and the same is registered as NDPS Sessions Case No.17 of 2018.

5) Section 37 (1) (b) of the NDPS Act provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973 no person accused of an offence punishable for offences under section 19 or Section 24 or Section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless (i) the public prosecutor has been given an opportunity to oppose the applicant such release, and (ii) where the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. In the instant case, the applicant is not accused of an offence under

Section 19, Section 24 or Section 27A of the NDPS Act. Furthermore, the records prima facie reveal that the applicants were in possession of non-commercial quantity of Ganja. Hence, in my considered view, bar of Section 37 of the NDPS Act, is not attracted. The investigation has been completed and the presence of the applicants is not required for interrogation or investigation. The learned APP submits that the applicants have no other criminal antecedents. It is also to be noted that in view of enormous pendency of cases, trial of the case against the applicants would not commence in the near future.

6) Considering the above facts and circumstances, in my considered view, the applicants are entitled for release on bail. Hence, the applications are allowed on the following terms :

- (i) The applicants be released on bail in N.D.P.S. Sessions Case No. 17 of 2018 pending on the file of learned Additional Sessions Judge, at Pune. on their furnishing bail bonds of Rs. 50, 000/- each with one or two solvent sureties each in the like amount to the satisfaction of the learned trial Court.
- (ii) After release from jail, the applicants shall report to the Investigating Officer or Senior P.I. of `

Bharatiya Vidyapeeth Police station, Pune on first Monday of every month between 10-30 a.m. to 2:00 p.m. until further orders.

(iii) The applicants shall attend all the dates before the Trial Court till conclusion of the trial.

(iv) The applicants shall furnish their permanent and temporary addresses, if any, and their contact details to the Investigation Officer.

(v) The applicants shall not change their residential address without prior intimation to the Investigation Officer.

(vi) The applicants shall not interfere with the complainant/first informant, other witnesses and shall not tamper with the evidence in any manner.

(SMT. ANUJA PRABHUDESSAI, J.)