

JPP

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

CRIMINAL BAIL APPLICATION NO. 1702 OF 2018

Pravin Ananta Shete

... Applicant.

V/s.

The State of Maharashtra

... Respondent.

Mr. P.G. Sarda I/b. Yogita Sarda for the Applicant.

Ms. J.S. Lohokare, APP for the Respondent – State.

CORAM : A.S. Gadkari, J.

DATE : 27th November 2018.

P.C. :-

1. This is an application under Section 439 of Code of Criminal Procedure for bail in C.R. No. 210 of 2017 dated 1st August 2017 registered with Manchar Police Station, Pune under Section 8(C), 20(C) of Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985.

2 Heard learned Counsel for the Applicant and the learned APP. Perused the charge-sheet.

3. It is the prosecution case that the Police received confidential information that, Accused No.1 viz. Shrihari Walase alongwith the Applicant were to come at a specific place for delivery of ganja, a narcotic drug and accordingly, after completing legal formalities, a trap was laid. On the date of alleged incident, the Accused No.1 alongwith the Applicant appeared at the said place. When the Police accosted the accused persons, the Applicant fled away from the scene of offence. However, the Police were successful in apprehending Accused No.1 Shrihari Walase at the spot. During the search of Accused No.1 Shrihari Walase, ganja approx. weighing 51 kg. And 270 gms. was found in his possession. The Applicant was arrested on 8th August 2017. After completion of investigation, the Police have submitted charge-sheet.

4. The learned Counsel for the Applicant submitted that after the arrest of the Applicant, test identification parade has not been conducted by the Police and therefore, the identity of the Applicant has not been established as the same person who fled away from the scene of offence. He further submitted that, the

Police are trying to establish the identity of the Applicant on the basis of a statement given by the co-accused when he was in their custody. He submitted that the said statement can be looked into or relied upon only at the stage of investigation and not otherwise, as in the present case, after completion of investigation, the Police have submitted charge-sheet, without conducting test identification parade. He further submitted that the alleged confessional statement of co-accused cannot by itself be treated as a substantive piece of evidence against another co-accused. In support of this contention, he relied on the decision of the Supreme Court in the case of *Surinder Kumar Khanna v/s. Intelligence Officer Directorate of Revenue Intelligence dated 31st July 2018 passed in Criminal Appeal No.949 of 2018*. He therefore prayed that the Applicant may be released on bail.

5. A minute perusal of the charge-sheet would indicate that, after the arrest of the Applicant on 8th August 2017, till the submission of charge-sheet or even thereafter till date the Police have not conducted test identification parade of the Applicant to establish his identity as the person who was present at the scene of

offence with the Accused No.1 Shrihari Walase. Thus, the identity of the Applicant and his involvement in the present crime is shrouded with ambiguity. It appears from the record that the alleged confessional statement of co-accused is a statement which may at the most fall within the purview of Section 30 of the Evidence Act and therefore, the same has to be kept aside from consideration at this stage.

Apart from the aforestated circumstances there is no other material available on record to implicate the Applicant in the present crime. It prima-facie appears that, the Applicant is not guilty of an offence under the N.D.P.S. Act.

7. In view of the above, the Applicant is entitled to be released on bail.

Hence the following order :

(a) The Applicant be released on bail in C.R. No. 210 of 2017 dated 1st August 2017 registered with Manchar Police Station, Pune on his furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.

(b) After his release from the jail, the Applicant shall attend the concerned Police Station on every 1st Monday of the month between 10.00 a.m. and 12.00 noon till conclusion of trial.

(c) Applicant shall not tamper with the evidence and / or influence the prosecution witnesses.

8. Application is allowed in the aforesaid terms.

(A.S. Gadkari, J.)