

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

BAIL APPLICATION NO. 2057 OF 2018

Nasir Hussin s/o. Mahemood AnsariApplicant

V/s.

The State of MaharashtraRespondent

Mr. Pritam P. Runwal for the applicant.

Mrs. J.S. Lohokare, APP for the State.

Mr. Yuvraj A. Chavan, Police Sub Inspector,
Pawarwadi Police Station, Malegaon present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 25th SEPTEMBER, 2018.

P.C.:

. This is an application for bail under Section 439 of Criminal Procedure Code filed by the aforesaid applicant, who is facing trial in Sessions/NDPS Case No.1/2018 pending on the file of Additional Sessions Judge, Malegaon. The said case arises from C.R.No.II-11/2018 registered with Pawarwadi Police Station, Malegaon, District Nashik for offences punishable under sections 20(b) and 22(b) of The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985.

2. The said crime was registered pursuant to the first information report lodged by Kalpeshkumar Vijay Chavan, Police Sub-Inspector,

attached to Malegaon City Police Station.

3. The case of the prosecution in brief is that on 15/05/2008, the Additional S.P., Malegaon had received information in respect of sale of *ganja* by one Anwar Bag Aziz Baig of Gulshan Nagar, Malegaon. The first informant/PSI, Kalpeshkumar was directed to verify the said information. The first informant confirmed the authenticity of the information and thereafter, as per the directions of the Additional S.P., he with the help of P.I. Sase of Pawarwadi Police Station and other members of the raiding party proceeded to the house of Anwar Baig. It is alleged that the raiding party searched the house of Anwar Baig in presence of panchas and they recovered *ganja* weighing 8 kgs and 100 gms from the house of said Anwar Baig. Accordingly, the aforestated crime was registered and said Anwar Bagi was arrested on the same date i.e. on 15/05/2018.

4. The material on record *prima facie* indicates that in the course of investigation and on the basis of the statement of the co-accused Anwar Baig, the present applicant came to be arrested on 18/05/2018. It is alleged that *ganja* weighing about 141 gms was recovered from the house of the present applicant.

5. The applicant had filed the bail application before the Additional Sessions Court, Malegaon which has been dismissed by order dated 12/06/2018 mainly in view of the provisions under section 37 of NDPS Act. Hence, the present application.

6. Mr. Pritam Runwal, learned counsel for the applicant submits that the offence is bailable and that the bar of section 37 of the NDPS Act is not applicable. In this regard, he has relied upon decision of this Court in *Uttam Dhaniram Barman v/s. State of Maharashtra 2006 ALL MR (Cri) 794 in Criminal Application No.1722 of 2005 dated 18th November, 2005* and the decision in *Robul Saikh @ Kalu Saikh V/s. State of Kerala 2016 ALL MR (Cri) Journal 188*.

7. Mrs. J.S. Lohokare, learned APP, under instructions from the Investigation Officer who is present before the Court concedes that the punishment prescribed is less than five years, the offence is bailable and that the bar of section 37 is not applicable.

8. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

9. The records *prima facie* reveal that ganja weighing about 414 gms

has been recovered from the house of the applicant. There is no dispute that the applicant was not in possession of *ganja* for commercial purpose. The applicant was in possession of 414 gms, which being a small quantity is punishable with rigorous imprisonment for a term which may extend to one year or fine which may extend to Rs.10,000/- or with both.

10. In *Uttam Burman (supra)*, the co-accused was found to be in possession of ganja weighing 8 kg and 200 gms and he was charged for offence punishable under section 20 of the NDPS Act. The Single Judge of this Court observed that :-

“4... it is clear that the Ganja alleged to be in possession of the applicant is weighing 8 kg and 200 gms. It can thus be seen that it cannot be said that the said possession was for commercial purpose. It can also be seen that the applicant is charged with an offence punishable under Section 20 and not for the offence punishable under sections 19 and 24 of the NDPS Act. In that view of the matter, the provisions of section 37 are not applicable to the facts of the present case. ”

11. Reverting to the facts of the present case, the applicant was found to be in possession of *ganja* weighing 414 gms, which is a small quantity. The possession of ganja was not for commercial purpose.

Furthermore, the charge sheet has already been filed and the custody of the applicant is not required for the purpose of interrogation or investigation. Mrs. J.S. Lohokare, learned APP, under instructions, submits that the applicant has no criminal antecedents. The applicant is a permanent resident of Dhule District and there are no chances of him absconding or thwarting the course of justice.

12. Considering the above facts and circumstances, the Bail Application is allowed on following terms and conditions :-

(a) The applicant who is arrested in C.R.No.II-11/2018 registered with Pawarwadi Police Station, Malegaon, District Nashik is ordered to be released on bail on furnishing bail bonds of Rs.50,000/- (Rupees Fifty Thousand) with two local sureties in the like amount.

(b) The applicant shall report to the Pawarwadi Police Station twice a week from 09:00 a.m. to 11:00 a.m. and shall not leave the jurisdiction of Dhule District without prior permission of Additional Sessions Judge, Malegaon until further orders.

(c) The applicant shall furnish his permanent address and temporary address, if any, and his contact details to the concerned Court.

(d) The applicant shall not change his residential address without prior intimation to the concerned Court.

(e) The applicant shall not interfere with the witnesses in any manner.

(SMT. ANUJA PRABHUDESSAI, J.)