

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Criminal Application (BA) No.811 of 2018
(Sk. Sohil Sk. Samir .vs. State of Maharashtra through PSO PS City Kotwali,
Akola, Dist. Akola)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. U.J. Deshpande, Advocate for Applicant.
Mr. V.A. Thakre, APP for Respondent.

CORAM : NITIN W. SAMBRE, J.
DATED : SEPTEMBER 03, 2018.

On 20.07.2018, upon secret input the respondent-investigating agency intercepted present applicant with his one accomplice Alkama Khan and upon personal check of the applicant and the co-accused, cannabis leaves (*ganja*) were recovered from the applicant to the tune of about 430 grams and from co-accused 600 grams. The total quantity recovered in Crime No. 210 of 2018 punishable under Section 20(b)(ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act") was more than 1000 grams i.e. little more than the small quantity as notified by the Central Government under the NDPS Act. The small quantity notified is 1000 grams under the NDPS Act.

2. The applicant came to be apprehended immediately on July 24, 2018 in which the applicant is seeking regular bail.

3. In the aforesaid background, after the application for regular bail was rejected by the learned Special Court, Akola, the applicant has approached this Court seeking regular bail on the ground that considering the quantity which is recovered from the applicant i.e. around 430 grams, which is identified as small quantity under the NDPS Act and the offence being punishable with less than three years, pursuant to the provisions of Schedule II under the Cr.P.C., the applicant is entitled for bail. Applicant has drawn support from the judgment of this Court in the matter of **Stefan Mueller .vs. State of Maharashtra** reported in **2010 ALL MR (Cri) 2503** particularly paragraphs 9, 10 and 11.

4. Mr. Thakre, learned A.P.P. would oppose the bail and submit that the investigation in the matter is still going on. According to him even though what is recovered from the applicant is 430 grams, the total quantity of narcotic substance recovered from the applicant and the co-accused is 1030 grams i.e. more than the small quantity. He would then urge that if the bail is granted , there is every likelihood that the applicant will tamper with the evidence and the investigation may affect.

5. Considered rival submissions. It is not in dispute that from the applicant 430 grams of Ganja and from co-applicant 600 grams of Ganja, total 1030 grams is recovered pursuant to the raid. The seizure panchanama in the crime in question depicts that total recovery of banned substance is to the tune of 1030

grams and if the said total quantity is appreciated pursuant to the Schedule appended to the NDPS Act issued by the Central Government on 19.10.2001, the small quantity as reflected against Entry 55 is 1000 grams whereas commercial quantity is 20 kg. If the total quantity seized in the crime in question is 1030 grams, same is little above small quantity and in any case substantially less than the commercial quantity i.e. 20 kg.

6. The provisions of Section 20(b)(ii)(A) and (B) of the N.D.P.S. Act reads thus :-

*“20. Punishment for contravention in relation to cannabis plant and cannabis-
Whoever, in contravention of any provisions of this Act or any rule or order made or condition of licence granted thereunder-*

(a).....

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable-

(i).....

(ii) where such contravention relates to sub-clause (b)....

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine, which may extent to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten

years and with fine which may extend to one lakh rupees.”

7. So the punishment prescribed for lesser than the commercial quantity but greater than small quantity is ten years with fine of Rs.1 lakh. What is prescribed under Section 20(b)(ii)(A) of the N.D.P.S. Act is that a person if involved in small quantity, i.e. 1000 grams or less, the same is punishable with rigorous imprisonment for a period of one year or fine of Rs.10,000/- or both.

8. What is recovered from the present applicant is admittedly 430 grams and in any case same is within the limit of small quantity prescribed under the Schedule.

9. That being so, the punishment prescribed under Section 20(b)(ii)(A) is maximum one year and as such, in my opinion, the applicant is entitled to be released.

10. Apart from the aforesaid considerations, the fact remains that there are no similar criminal antecedents against the applicant nor it is the case of the prosecution that the narcotic substance seized from both the accused were for commercial trade. As such application stands allowed on the following terms:

(i) The applicant shall be released on bail on furnishing personal bond of Rs.15,000/- with two solvent sureties in the like amount.

(ii) The applicant shall remain outside the

jurisdiction of City Kotwali Police Station, Akola, but for attending the Police Station and the dates of hearing in the Court.

(iii) The applicant shall give his contact number and place of residence to the investigating officer within one week from today.

(iv) The applicant shall not tamper with prosecution evidence nor shall attempt to influence the prosecution witnesses in any manner.

(v) The applicant, if found indulging in similar type of offence again, the prosecution will be at liberty to move for cancellation of the bail granted to the applicant.

11. Application stands disposed of accordingly.

JUDGE

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