

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

**CRIMINAL BAIL APPLICATION NO. 19 OF 2019**

Sonali Vinod Machrekar ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Ayaz Khan for Applicant.

Ms. S. S. Kaushik, APP for Respondent – State.

Mr. Ravikiran Tukaram Darwade, API, Vishrantwadi Police Station, Pune present in Court.

**CORAM : NITIN W. SAMBRE, J.**

**DATE : FEBRUARY 5, 2019.**

**P.C. :**

. The Applicant is seeking regular bail in Crime No. 123 of 2018 for an offence punishable under Sections 8 (C), 20 (B) (C), 29 of Narcotic Drugs and Psychotropic Substances Act (for short, 'NDPS Act' for the sake of brevity) and Section 65(e) of Maharashtra Prohibition Act. The Applicant came to be arrested on 6<sup>th</sup> April 2018 and chargesheeted.

2. The Applicant is alleged to be the family member of main accused Suraj Manohar Machrekar, as she is married to brother of Suraj

namely, Vinod. It is alleged that in the offence in question there is recovery of 2 Kgs. 145 Grams of contraband i.e. Ganja.

3. In the aforesaid background, the learned Counsel for Applicant made two fold contentions – (a) that the quantity found in custody of the Applicant is less than the commercial quantity; and (b) that there is non-compliance of Section 42(1) NDPS Act, as the raid was carried out by the Police Inspector, however, the written intimation thereof was not placed before the Senior Officer.

4. The learned APP submits that the prosecution case against the Applicant is that the Applicant was trading in the contraband and what was recovered i.e. 2 Kgs. 145 Grams is just a huge quantity. According to her, the investigation was carried out under the supervision of Assistant Commissioner of Police and as such there is sufficient compliance of Section 42(1) of the NDPS Act. She would draw support from the station-diary entry to that effect carried out on 5<sup>th</sup> April 2018.

5. Considered rival submissions.

6. The fact that the Applicant was found in custody of contraband i.e. prohibited item (Ganja) to the extent of 2 Kgs. 145 Grams is not in dispute. By no stretch of imagination it could be termed as quantity which could be identified as non-commercial purpose having regard to the provisions of NDPS Act.

7. In such an eventuality, what is required to be considered is, the maximum punishment provided for possessing non-commercial quantity of contraband under the provisions of NDPS Act. Apart from above, in a similar placed situation co-accused Usha Krishna Machrekar has approached before the learned Sessions Judge seeking regular bail based on lawful plea of non-compliance of Section 42(1) of NDPS Act. A specific finding is recorded by the learned Sessions Judge that the prosecution is unable to demonstrate the compliance of Sub Section 1 of Section 42 of the NDPS Act as the fact as regards the receipt of secrete information and carrying out a raid was not placed before the Senior Officer in writing.

8. Though the learned APP is right to draw support from the station-diary entry dated 5<sup>th</sup> April 2018, I hardly noticed that the said

entry is helpful to the prosecution, particularly when the said station-diary entry was not brought to the notice of the Senior Officer immediately. As such it has to be inferred that there is non-compliance of Sub-section 1 of Section 42 of the NDPS Act. That being so, a case for grant of bail is made out. Hence the following order.

ORDER

- (A) The Applicant be released on bail in Crime No. 123 of 2018 for an offence punishable under Sections 8 (C), 20 (B) (C), 29 of Narcotic Drugs and Psychotropic Substances Act and Section 65(e) of Maharashtra Prohibition Act on executing PR Bond of Rs. 1,00,000/- with two sureties in the like amount.
- (B) The Applicant shall neither tamper the evidence of prosecution nor influence the prosecution witnesses.
- (C) Till conclusion of trial the Applicant shall stay away from the jurisdiction of the Court but for attending the trial.
- (D) The Applicant shall furnish her contact number and address to the Investigating Officer within a period of two weeks from the date of her release.

(E) If the Applicant is found involved in similar type of offence, prosecution will be at liberty to move for cancellation of bail.

9. Criminal Bail Application stands allowed in above terms.

**(NITIN W. SAMBRE, J.)**