

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

BAIL APPLICATION NO. 163 OF 2019

Sumant @ Sumit Bhaskar Borale	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Aniket Nikam i/b Mr. Aashish Satpute for the Applicant.
Ms. S.S. Kaushik, A.P.P. for the Respondent – State.
Mr. Palkar, P.S.I. Crime Branch, Nashik City, present.

CORAM : P.N. DESHMUKH, J.

DATED : 12th APRIL, 2019.

P.C. :

1 Heard learned Counsel for applicant and learned A.P.P. Investigating Officer present. Perused the copy of charge-sheet.

2 Earlier this application was heard on 13.03.2019 on which day on the application of learned A.P.P., matter was adjourned as Investigating Officer was not present and for want of instructions, A.P.P. was not in a position to assist the Court to establish compliance of mandatory provisions of Section 42 (1), (2) of N.D.P.S. Act, 1985, though case of prosecution is based on information received by police and not a chance recovery.

3 Learned Counsel for applicant apart from merits since no compliance of Section 42 (1), (2) of N.D.P.S. Act is established has claimed bail on parity by relying orders of this Court passed in Bail Applications

Nos.102 of 2019, 262 of 2019 and 2893 of 2018 of co-accused persons involved in this crime who are similarly situated. The orders reveals that considering involvement of said co-accused based on the memorandum statement of accused persons, are held entitled for bail.

4 To establish compliance of above mandatory provision, Learned A.P.P. like on earlier date, has referred to station diary entry dated 12.06.2018 made by some officer attached to control room which entry as such, admittedly is not in the handwriting of P.S.I. Manish Kulkarni attached local Crime Branch Unit-I, Nashik City who according to the case of prosecution has received information. In that view of the matter document referred by learned A.P.P. do not establish said compliance. Application is, therefore, liable to be allowed on this count itself.

5 Learned A.P.P. had then opposed the application on the ground that applicant's involvement is on the basis of memorandum statement of co-accused which submission, however, cannot be considered against the applicant to establish his involvement as such statement can only be considered to the extent of effecting recovery during the course of investigation. Admittedly, there is no other independent evidence establishing applicant's complicity in the present crime.

6 In that view of the matter, following order is passed :

ORDER

(i) Applicant shall be released on bail in C.R. No. 155 of 2018 registered with Adgaon Police Station, Nashik, for the offences punishable under Sections 8(c), 20(c), 22, 25, 29 of N.D.P.S. Act, on his executing P.R. Bond in the sum of Rs.1,00,000/- with one surety in the like amount.

(ii) Applicant shall mark his presence with Adgaon Police Station on the first day of each month initially for a period of six months and thereafter quarterly on the first day of each such month, pending trial.

Application is disposed of as allowed.

(P.N. DESHMUKH, J.)