

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

13 BAIL APPLICATION NO.1052 OF 2020

SHAHRUKH S/O DASTGIR QURESHI
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Shah N.S.
APP for Respondent : Mrs. D S Jape

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CORAM : V.K. JADHAV, J.
Dated: October 22, 2020

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PER COURT :-

1. The applicant is seeking regular bail in connection with Crime No.204 of 2019 registered with Naldurg Police Station, Naldurg, Tq. Tuljapur, District Osmanabad for the offence punishable under section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985. His application Exh.5 with similar prayer in Special Case No.118 of 2019 came to be rejected by the learned Special Judge, Osmanabad vide order dated 12.2.2020.

2. Brief facts of the case are as follows :-

On 30.6.2019 police patrolling team Naldurg has received the secret information that two persons are

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carrying contraband Ganja in the car bearing registration No.MH-04/GE-302 from Hyderabad towards Naldurg. On receipt of this information, police raiding party went to the spot. At about 19.40 hours said car arrived at Aliyabad Bridge and though the raiding party tried to intercept the said car, occupants of said car did not stop it. Consequently, the raiding party has chased the said car and caught red handed the co-accused no.2 and present applicant. On search, 130 packets containing Ganja weighing 292.8 Kgs were found in the car.

3. Learned counsel for the applicant submits that there is an unexplained delay of 11 hours in lodging the FIR. Though, the applicant was arrested on 30.6.2019 at about 19.50 hours, FIR was registered on 1.7.2019 at about 6.41 hours. Learned counsel submits that, except the evidence that the applicant was travelling in the Car, there is no connecting evidence against him. The applicant has been falsely implicated in this crime. Learned counsel submits that police

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authorities failed to comply with the mandatory provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short hereinafter referred to as 'the Act') in respect of the search and recovery of the contraband. Learned counsel submits that, in the similar set of allegations co-accused no.2 Arif Yakub Mulla came to be released on bail by this Court (Coram : Smt. Vibha Kankanwadi, J.) by order dated 22.6.2020 in bail application no.421 of 2020. It has been specifically observed by this Court that sample was randomly taken. It has further observed that at one place it is stated that there were 8 packets and after taking randomly quantity of 100 grams of Ganja it was sent for analysis. Learned counsel submits that this Court has questioned the entire operation/procedure and accordingly granted bail to the applicant. Learned counsel submits that the Government of India has issued certain standing orders on procedural aspect including sampling, classification of drugs, drawal of samples, and further quantity to be drawn for the sampling. Learned counsel submits that the quantity of

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24 grams in each case is required for chemical test pertaining to opium, Ganja and Charas. Furthermore, as per the instructions, seizure panchnama is required to be drawn on the spot itself in presence of the accused persons, however, said instructions are also not followed in the instant case. Learned counsel submits that there is no conscious possession of the applicant. There is no criminal history. The applicant is having fixed place of residence, available for trial. The applicant may be released on bail.

4. Learned counsel for the applicant in order to substantiate his submissions placed reliance on the following three cases :-

1. Mohan Lal Vs. State of Punjab reported in (2018) 17 Supreme Court Cases 627.
2. Union of India Vs. Bal Mukund and others reported in (2019) 12 Supreme Court Cases 161.
3. Noor Aga Vs. State of Punjab and others reported in (2008) 16 Supreme Court Cases 417.

5. Learned APP has strongly resisted the application on the ground that the applicant was caught
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red handed by the police team while transporting huge quantity of Ganja in a Car. Learned APP submits that there were 130 packets containing Ganja kept below the driver seat, back seat and dickey of the car weighing 292.8 kilograms worth of Rs.4,38,000/-. Learned APP submits that in terms of the provisions of section 37 of the Act, recording of the satisfaction by the Court about existence of twin conditions namely accused being not guilty and not likely to commit any offence is necessary. Learned APP submits that the case of each and every accused has to be considered on its own merits and in terms of the Section 37 of the Act, principle of parity is not attracted. Learned APP submits that standing orders are merely intended to guide the officers to see that a fair procedure is adopted by the officer-in-charge of the investigation. Learned APP submits that in the instant case, seizure panchnama could not be drawn on the spot and it was required to be drawn in the police station for the reason that the accused persons caught red handed in a car on heavy traffic road and due to the crowd and also darkness it was difficult for the raiding

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party to draw the panchnama at the spot itself. It has been mentioned in the FIR to that effect and accordingly seizure panchnama was drawn in the police station in presence of the accused persons. Learned APP submits that so far as drawing of the sample randomly is concerned, the same is disputed question of fact and during the course of the trial, the accused may assail the said evidence. There is strong case against the applicant and in terms of the provisions of section 37 of the Act, application is liable to be rejected.

6. On going through the allegations made in the complaint and on perusal of the charge-sheet, it appears that the applicant and co-accused persons caught red handed by the Police Team while transporting huge quantity of Ganja in the Car. There were 130 packets containing Ganja weighing 292.8 kilograms worth Rs.4,38,000 kept beneath the driver seat, back seat and in the dickey of the Car.

7. In a case **Union of India Vs Rattan Malik @ Habul reported in AIR 2009 SC (Supp) 1567** in

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paragraph no.13 the Supreme Court has made following observations :-

“13. It is plain from a bare reading of the non-obstante clause in the Section and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the [NDPS Act](#) is not only subject to the limitations imposed under [Section 439](#) of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by sub-clause (b) of sub- section (1) of [Section 37](#) of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz; (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds". The expression 'reasonable grounds' has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [Vide Union of India Vs. Shiv Shanker Kesari²] Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the [NDPS Act](#).”

8. The Supreme Court held that recording of the satisfaction on both the conditions of section 37 of the Act is sine qua non for granting of bail under the NDPS Act. Those conditions are cumulative and not alternative. The Supreme Court has further clarified

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that satisfaction contemplated regarding the accused being not guilty, has to be based on “reasonable grounds”. The Supreme Court has held that ‘reasonable grounds’ means something more than prima facie grounds. It connotes substantial probable causes for believing that accused is not guilty of the offence is charged with. In the instant case, there are no reasonable grounds for believing that accused is not guilty of the alleged offence.

9. Learned counsel for the applicant has relied upon the above mentioned three cases to substantiate the submissions in respect of the mandatory nature of the standing orders issued by the Government of India. In a case **Noor Aga Vs. State of Punjab and another** reported in **(2008) 16 Supreme Court Cases 417** relied upon by the learned counsel for the applicant, in paragraph no.32, the Supreme Court has made following observations :-

“Recently, this Court in *State of Kerala and Ors. v. Kurian Abraham (P) Ltd. and Anr.* [(2008) 3 SCC 582], following the earlier decision of this Court in *Union of India v.*

Azadi Bachao Andolan [(2004) 10 SCC 1] held that statutory instructions are mandatory in nature.

Logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance of these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution.”

10. In the instant case, I do not think that standing orders have been blatantly flouted by the raiding team/investigating officer. It is a part of the record that due to crowd, darkness and heavy traffic on road, raiding team could not prepare the seizure panchnama on the spot itself and thus in presence of the accused after taking car alongwith quantity of contraband Ganja kept in the car to the police station, seizure panchnama was drawn in presence of the accused persons.

11. So far as drawing of the sample randomly from the huge quantity of Ganja kept in 130 packets is concerned, the same is the disputed question of fact and during the course of the trial, the applicant/accused

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may assail the prosecution evidence in this regard. However, at present for the purpose of granting bail, the same is not required to be considered.

12. In a case of **State of Punjab Vs. Makhan Chand** reported in **2004 AIR (SC) 3061** in paragraph no.10 of the order, the Supreme Court has made following observations :-

“10 Secondly, when the very same standing orders came up for considerations in [Khet Singh v. Union of India](#), this Court took the view that they are merely intended to guide the officers to see that a fair procedure is adopted by the Officer-in-Charge of the investigation. It was also held that they were not inexorable rules as there could be circumstances in which it may not be possible for the seizing officer to prepare the mahazar at the spot, if it is a chance recovery, where the officer may not have the facility to prepare the seizure mahazar at the spot itself. Hence, we do not find any substance in this contention.”

13. In the aforesaid case, the Supreme Court has observed that standing orders are merely intended to guide the officers to see that a fair procedure is adopted by the Officer-in-Charge of the investigation and there were no inexorable rules as there could be circumstances in which it may not be possible for the seizing officer to prepare the mahazar at the spot, if it is

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a chance recovery, where the officer may not have the facility to prepare the seizure mahazar at the spot itself.

14. In the given set of allegations, in my considered opinion, two conditions as contemplated under section 37 of the Act are not satisfied. Though there is no criminal history, the applicant is likely to commit similar offence, if enlarged on bail. It is well settled that in a cases where Narcotic Drugs and Psychotropic Substances are involved, the accused would indulge in activities which are lethal to the societies. In view of the same, I am not inclined to grant bail to the applicant. Hence, following order.

O R D E R

Application is rejected.

(V.K. JADHAV, J.)

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