

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

27 BAIL APPLICATION NO. 1408 OF 2020

DAYARAM GUMALA PAWARA
VERSUS
THE STATE OF MAHARASHTRA

.....

Advocate for Applicant : Mr. Patil Vijay B.
APP for Respondent-State : Mr. A. A. Jagatkar

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CORAM : V. K. JADHAV, J.
DATED : 21ST DECEMBER, 2020

PER COURT :-

1. The applicant is seeking regular bail in connection with Crime No. 67 of 2018 [Special Case No. 80 of 2019] registered with Shirpur Taluka Police Station, District Dhule for the offence punishable under Sections 20(b), 2(c) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "NDPS Act"). His application below Exhibit 3 in Special Case No. 80 of 2019 with similar prayer came to be rejected by the Sessions Judge, Dhule vide order dated 17.10.2019.

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2. Learned counsel for the applicant submits that the investigation is over and the charge sheet has been submitted. The applicant is in jail in connection with the present crime since 21.05.2019. There is no criminal history. Learned counsel submits that there is no compliance of Section 42 of the NDPS Act. Even though a reference has been given in the FIR about receipt of secret information, however, there is no further assertion in the complaint that the said secret information was reduced into writing and forwarded to the superior officer. Learned counsel submits that even though the *ganja* crop came to be seized from the land Gat Nos. 88/1, 88/2 and 88/3 respectively, however, as per the investigation papers, the applicant is not the exclusive owner in possession thereof. In view of the 7/12 extracts collected during the course of investigation, there are other persons as owners in possession of the said agricultural lands. However, those persons have not been arraigned as accused in connection with the present crime. Learned counsel submits that even though as per the report certain quantity of *ganja* came to be recovered from the said

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agricultural fields, however, at the time of drawing of inventory panchanama, surprisingly the weight of the said quantity of *ganja* has been reduced. Learned counsel submits that there is no apparent reason for the same. The applicant is having a fixed place of residence and is available for trial. The applicant may be released on bail.

3. Learned counsel for the applicant, in order to substantiate his contention, placed reliance on the following two cases:

- i. ***Bipin Kumar Ramsagar Pandit @ Saxena v. State of Maharashtra***, reported in ***2014 (1) Bom.C.R. (Cri.) 486*** and
- ii. ***Rajaram Kadu v. The State of Maharashtra [Bail Application No. 2108 of 2016]*** decided by this Court at its Principal Seat at Bombay (Coram : Prakash D. Naik, J.) vide order dated 13.06.2017.

4. Learned APP has strongly resisted the application on the ground that the 7/12 extracts have been collected during

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the course of investigation and though the agricultural land Gat Nos. 88/1A, 88/1B and 88/2 stand in the name of Rumla Malsing Pawara and Gumla Malsing Pawara respectively, however, the land Gat No. 88/3 stands in the name of the present applicant. Learned APP submits that as per the statement of said Rumla Malsing Pawara, the present applicant was cultivating all the agricultural lands belonging to said Rumla Pawara and Gumla Pawara. Even though said Rumla Pawara objected for cultivation of *ganja* crop, however, the present applicant has informed him that the applicant will face the consequences. Learned APP submits that *prima facie* there is a strong case against the applicant. In terms of the provisions of Section 37 of the NDPS Act, the applicant is not entitled to be released on bail.

5. On going through the allegations made in the complaint and on perusal of the charge sheet, it appears that the Superintendent of Police Dhule had received secret information and on the basis of the said secret information, he had given directions to the P.S.I. of the concerned police

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station to conduct raid and accordingly the informant P.S.I. had conducted the raid. In view of the same, I hardly find any substance in the submissions made on behalf of the applicant that there is no compliance of Section 42 of the NDPS Act. The cases cited by the learned counsel for the applicant for non-compliance of the provisions of Section 42 of the NDPS Act are on altogether different facts and cannot be made applicable to the present case.

6. In the case of *Union Of India vs Rattan Mallik @ Habul* reported in *AIR 2009 SC (Supp) 1567*, in para 13 of the judgment, the Supreme Court has made the 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

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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 Kesari] Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act."

7. In terms of the provisions of Section 37 of the NDPS Act, the satisfaction of the Court, as contemplated, regarding

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the accused being not guilty, has to be based on reasonable grounds. As observed by the Supreme Court, it connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with.

8. In the instant case, though certain *ganja* plants were found in the agricultural land, however, so far as the land Gat No. 88/1A and 88/2 are concerned, those lands are owned and possessed by Rumla Pawara and Gumla Pawara respectively. It further appears from the statement of the said Rumla Pawara that Gat No. 88/1 is divided between the members of the family and in turn, he got land Gat No.88/1A whereas, land Gat No. 88/1B has been allotted to his daughter-in-law. Though the land Gat No. 88/3 is standing in the name of the present applicant, it is not clear from the panchanama as to in which specific portion of the land, the *ganja* plantation was found.

9. So far as reduction in the weight of *ganja* is concerned, the Professor of Botany, Botanical Department, Collage of Agriculture, Dhule has opined in his letter dated 18.12.2020, vre/-

which is now placed before this Court by the learned APP, that the weight of wet *ganja* leaves will be more as compared to the dry leaves of *ganja* plants and thus, in the inventory panchanama, the difference arose.

10. After considering the aforesaid aspect of the ownership and cultivation of the agricultural lands bearing Gat Nos. 88/1 and 88/2, and further 88/3, reasonably it appears that the applicant has no reason to cultivate the land Gat Nos. 88/1A and 88/2 which belong to the said Rumla Pawara and Gumla Pawara respectively. Since it is not clear as to exactly in which part of those agricultural lands the *ganja* plantation was found, in my considered opinion, the case is made out by the applicant for bail. There is no criminal history and in view of the same, the applicant is not likely to commit similar offence if released on bail. I find substantial probable cause, as discussed above, for believing that the applicant is not guilty of the offence he is charged with. Needless to say that the aforesaid observations are purely for deciding the bail application and it is for the trial court to decide the

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same during the full-fledged trial of the case. Hence, following order.

O R D E R

- I. The application is hereby allowed.
- II. The applicant DAYARAM GUMALA PAWARA be released on bail in connection with Crime No. 67 of 2018 [Special Case No. 80 of 2019] registered with Shirpur Taluka Police Station, District Dhule for the offence punishable under Sections 20(b), 2(c) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, on furnishing P.B. of Rs.50,000/- with one or two solvent sureties of the like amount on the condition that the applicant shall not tamper with the prosecution evidence in any manner.
- III. Application is accordingly disposed of.

(V. K. JADHAV, J.)

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