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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1162 OF 2020

1) Bhagwan Hullapaa @ Baburao Pole
and another. = APPLICANTS

VERSUS

1) The State of Maharashtra
and another. = RESPONDENT/S

Mr.VS Undre, Advocate for Applicant/s
Mr.VS Badakh, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 15th December, 2020.

PER COURT:-

1) Present applicants have been arrayed as
accused in CR No.215/2020 dated 24.10.2020,
registered with Loha Police Station, District Nanded
for the offences punishable under Sections 20(1)(b)
of The Narcotic Drugs and Psychotropic Substances
Act, 1985 (herein after refereed to as NDPS Act)
and they seek anticipatory bail in connection with
the aforesaid crime.

2) Heard learned Advocate and learned APP
appearing for the respective parties.

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3) It has been vehemently submitted on behalf of the applicants that the FIR has been filed only against Hullapaa Shivram Pole. Names of the present applicants do not figure in the FIR. It has been contended that said Hullapaa was found cultivating Ganja in his field bearing Gut No. 228, situated at village Polewadi. The raiding party found 104 Ganja trees, which weighed about 129.200 kg, valuing Rs. 3,87,000/-. Now the prosecution intends to rope the present applicants, who are sons of Hullapaa, in the said crime. In fact, Hullapaa himself is the owner and possessor of the said land. There was partition amongst the family in the year 2017 and the Memorandum of the same was written in 2019. The applicants are the labours and they are residing separately from their father since 2017, though the partition deed was submitted before the learned trial Judge before whom they had filed an application under Section 438 of Cr.P.C.; however, it has not been considered in positive perspective. The entire Ganja/cannabis has been seized and, therefore, there is nothing to be recovered at the instance of the present applicants.

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There are no criminal antecedents of the applicants. They are innocent and, therefore, their liberty deserves to be protected. He, therefore, prayed for grant of interim relief to the applicants.

4) Per contra, learned APP strongly objected the application for grant of any relief and rather prayed for rejection of the application at the threshold taking into consideration the involvement of the present applicants. He submitted that though the land might have been standing in the name of their father, he is aged 60 and, therefore, there is less likelihood that he would have been cultivating the land personally. Further, though they have stated that there was partition of the family properties; yet they have not produced a single document on record. There is absolutely no mention as to why the partition deed was not effected in 2017. Why need arose in 2019 to reduce that alleged partition into writing is also not explained.

5) This Court cannot go into the aspect of

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partition deed while considering the bail application and, therefore, when prima facie fact is coming forward that Ganja crop was taken in the land bearing Gut No. 228, which is standing in the name of Hullapaa and it is his ancestral property, wherein the present applicants have their share, their custody is required.

6) The effect of narcotics and psychotropic substances on the life of young persons/generation is adversely affecting and, therefore, such offences are required to be sternly dealt with.

7) At the outset, it can be said that if the applicants failed to point out that ad interim or interim protection can be granted to them, in that case, the application in its entirety will have to be rejected.

8) The applicants, who are sons of Hullapaa Pole, have come with a case that there was partition amongst them and their father in 2017. They have tried to say, not directly but indirectly, that Gut No. 228 went to the share of

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their father. The other details have not been conveniently given by them as to which land came in their share. They have given their occupation as labour. It is hard to believe that in spite of having agricultural land and there was partition, the sons will not take any share to themselves, giving the entire land to father and be satisfied with their occupation as labour. We cannot find any reason for this approach. The document styled as "Watniche Smaran Patra" dated 28.11.2019 has been produced on record, which shows that there was some partition at the time of Padawa of 2017. Important point to be noted is that some other immovable property has been given to the present applicants. But the said document is only on Stamp of Rs.100/- and it is not registered. Therefore, we cannot say that the said document has any legal sanctity. The investigation, as shown that the present applicants have also role to play in carrying cultivation in the said land, then those 7/12 extract might be in the name of their father, they cannot escape by saying so. Further, the offences under the NDPS Act are serious and the drugs are destroying the generations, they will

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have to be dealt with sternly. Therefore, no case is made out to grant any relief in favour of the applicants.

9) Taking into consideration the aforesaid facts of the case, the applicants are not entitled to get bail under Section 438 of Code of Criminal Procedure. The application deserves to be rejected. Accordingly, it is rejected.

(SMT. VIBHA KANKANWADI,J.)

BDV