

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

CRIMINAL BAIL APPLICATION NO. 995 OF 2019

Vivekanand Vikas Bodare	...Applicant
Versus	
The State of Maharashtra	...Respondent

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Mr. Chaitanya Pendse a/w Kamlesh Mali i/b Saakshat Relekar,
Advocate for the Applicant.

Mr. H. J. Dedhia, APP for the State-Respondent.

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CORAM : PRAKASH D. NAIK, J.

DATE : 27th January, 2020

PC :

1. The applicant is seeking bail in connection with C.R. No. 199 of 2018 registered with Sangli City Police Station, for offences punishable under Sections 8(b), 20(b)(ii)(c), 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for Short “N.D.P.S. Act”).

2. The case of the prosecution is that on 16th November, 2011 complainant received secret information that three persons were standing at Patrakar Nagar for selling ganja. After making relevant entries in the Station diary, complainant along with panchas and police staff rushed to the spot. After reaching the spot the raiding party noticed black colour Maruti Ritz car and white colour Alto car. Applicant was sitting on the driver seat in the Ritz car and two others

were sitting in the Alto car. The complainant informed the applicant and others about provisions of N.D.P.S. Act and their right to be searched before gazetted officer or magistrate. Search was conducted. The search of black colour Ritz Car resulted in one white sack containing Ganja. Thereafter, the other car was searched and they found 10 packets containing ganja. The contraband were allegedly weighed and the ganja found in the black colour Ritz car was found weighing 8 kg 750 grams and the ganja found in the white colour Alto car was 20 kg 750 grams. Samples were obtained. Statements were recorded. On completing investigation, charge-sheet is filed.

3. Thus, the prosecution case is that the applicant was found driving car containing 8 kg 750 grams ganja. The other car driver and occupied by other accused was containing ganja weighing 20 kg 750 grams.

4. The primary contention of Mr. Pendse, learned counsel for applicant is that the ganja which was allegedly found in possession of the applicant was weighing 8 kg 750 grams which is less than the commercial quantity stipulated in the schedule prescribed under the N.D.P.S. Act. There is no connection between the applicant and the other persons found in the other car with possession of 20 kg. 750

grams ganja. The seizure from the applicant has to be separated and cannot be calculated with contraband in the possession of the other accused. It is further submitted that while registering FIR and even during investigation. The prosecution had not invoked charge of conspiracy. However, Charge was filed with additional charge under Section 29 of N.D.P.S. Act. It is submitted that there is no evidence on record to show that there was any concert/consensus between accused found in the other car and the applicant. There is no evidence to link seizure from applicant with the other accused. The alleged source is not common. It is also not the case of the prosecution is that there were common customers to whom the accused intended to sell the contraband. Merely on account of information being common, raid was carried out at same time, The accused cannot be said to have acted connivance with each other. The requisite ingredients to constitute charge of conspiracy are completely absent. It is submitted that for having an alleged possession of ganja, which was less than commercial quantity. The embargo under Section 37 of N.D.P.S. Act would not attracted.

5. Mr. Pendse, learned advocate for applicant relied upon several decision of the Apex Court as well as this Court. Reliance is placed on the Judgment of the Hon'ble Supreme Court delivered in the case of *Amarsingh Ramjibhai Barot V/s State of Gujrat*, order of this Court in

the case of ***Smt. Rashida Iqbal Khan V/s State of Maharashtra*** dated 21st June, 2006, passed in Criminal Application No. 2177 of 2006, order dated 7th July, 2008 passed by this Court in the case of ***Roshan Munan Sing V/s State of Maharashtra*** in Criminal Application No. 1227 of 2008, order dated 28th September, 2011 passed by this Court in Criminal application No. 498 of 2011. Relying upon the observations on the Hon'ble Supreme Court, it is contended that the same are applicant in the present case. It is further contended that in view of the quantity required is less than quantity alleged found in the possession of the applicant, the fetters under Section 37 of the N.D.P.S. Act will not be attracted. There are no criminal antecedents against applicant.

6. Learned APP submitted that the information was common. On receipt of the said information the same was recorded in writing and forwarded to the superior officer. The information was received that the accused are intending to sell ganja. In pursuant to receipt of the information, raiding party reached the spot, all the accused were found at same place in vehicles. Hence, both the seizures cannot be bifurcated and required to be calculated jointly which would turn out to be commercial quantity. It is further submitted that the applicant is not entitled for bail on the ground that he was found in the possession of the contraband which is less than commercial quantity.

Learned APP however fairly submitted on instructions that there is call record between accused found in both vehicles or that source of contraband was common and accused were to sell contraband to common customers.

7. I have gone through the documents on record. Information was received that the accused are likely to sell ganja. It is true that common information was received which was recorded. It is pertinent to note that applicant was found driving one car which was allegedly containing ganja of 8 kg. 750 grams, which is less than commercial quantity. The limit prescribed under the schedule for said drug viz. lesser than commercial quantity is 20 kg. Apart from the fact that information was common and that the raid was conducted at the same time, there is nothing on record to show even prima facie that accused found in two different cars were members of conspiracy or act was done in concert. It was submitted that Section 29 has been invoked at the subsequent stage. Assuming that the said provision has been brought into force there has to be some evidence prima facie to show that the accused were acting in connivance with each other and there was conspiracy to commit the crime and or there was meeting of mind to commit alleged at. Thus the contraband recovered from applicant is prima facie is less than commercial quantity.

8. In the case of ***Amarsingh Ramjibhai Barot V/s State of Gujrat, (SC)*** the facts indicate that information was received with regards to two persons likely to indulge in narcotic drugs. They were apprehended and on their individual search, contraband were recovered. The Hon'ble Supreme Court in Paragraph 7 & 8 of the said decision has observed that, there was no warrant for the conclusion that there was criminal conspiracy between the accused. There is no evidence to suggest that there was any such abetment/criminal conspiracy within the meaning of Section 29 of N.D.P.S. Act. This Court while granting bail in the case of ***Sangita Y. Gaikwad V/s The State of Maharashtra*** had considered similar issue. In the said decision it was observed that, merely from the fact that drug has been purchased from the same person may not constitute independent evidence of criminal conspiracy. In the other decisions also this Court has considered similar issue and granted bail.

9. Learned counsel also placed for consideration, the decision of the Hon'ble Supreme Court In the case of ***Birbal Prasad Alias Birbal prasad Sah alias Birbal Prasad Sao alias Birbal Sah V/s. State of Bihar (2018) 11 SCC 488*** in which it is observed that the apex Court had considered grant of bail in the absence, regors of Section 37 as the person is found in a possession of 14 Kg. Ganja which was non commercial quantity. Mr. Pendse also placed on record the order

passed by this Court in Bail Application No. 2590 of 2018, ***Abrar Ibrahim Shaikh V/s. State of Maharashtra*** in which the bail was granted, as fetters under Section 37 of N.D.P.S. Act do not apply. It is noted that the applicant has not other criminal antecedents. He is in custody from 17th November, 2018. Hence, case for grant of bail is made out.

10. Hence, I pass the following order :

ORDER

- i) Bail Application No.995 of 2019 is allowed;
- ii) The applicant is directed to be released on bail in connection with C.R. No. 199 of 2018 registered with Sangli City Police Station, Pune on furnishing P.R. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount;
- iii) The applicant shall report concerned police station once in a month on every first Saturday between 10.00 a.m. to 1.00 p.m. till further order.
- iv) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)