

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

CRIMINAL BAIL APPLICATION NO. 458 OF 2020

Asif Nabilal Mullani

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Nitesh Mohite i/b. Satyavrat P. Joshi for Applicant.

Mr. Swapnil S. Pednekar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 11th DECEMBER, 2020

P.C. :

1. This application is placed before the court today for correction in the name of the applicant mentioned in the title of the order dated 25/08/2020. The name of the applicant in the title of the order dated 25/08/2020 is mentioned as 'Asif Nadilal Mullani'. The correct name is 'Asif Nabilal Mullani'.

2. The name of the applicant be corrected accordingly in the title of the order dated 25/08/2020.

3. Rest of the order remains as it is.

4. Corrected order be uploaded.

(SARANG V. KOTWAL, J.)

CORRECTED ORDER DATED 25/08/2020 READS THUS

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Asif Nabilal Mullani	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Satyavrat P. Joshi, for the Applicant.

Mr. S. V. Gavand, APP for the State/Respondent.

CORAM :SARANG V. KOTWAL, J.

DATE :25th AUGUST, 2020

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.414/2019 registered with Juna Rajwada Police Station, Kolhapur under Section 8(c) read with Section 20(b) of Narcotic Drugs and Psychotropic Substances Act, 1985. The Applicant is arrested on 19.10.2019 and since then he is in custody. The investigation is over and the charge-sheet is filed.
2. Heard Shri Satyavrat Joshi, learned Counsel for the

Applicant and Shri S.V. Gavand, learned A.P.P. for the State.

3. The gist of the allegations from the charge-sheet filed against the Applicant are that on 18.10.2019 on prior information, a four wheeler was intercepted at about 11:50 p.m. within the jurisdiction of Juna Rajwada Police Station. It is alleged that as per the information that vehicle was intercepted. It was driven by the present Applicant. All the necessary requirements under Section 50 of the N.D.P.S. Act were complied with, and on search it was found that there was a gunny bag on the back seat of the car containing 7.646 kilograms of ganja. The samples were taken and the Applicant was arrested. The charge-sheet contains statements of raiding party members which are similar to the F.I.R. and the panchnama in respect of the raid.

4. Shri Satyavrat Joshi, learned Counsel for the Applicant at this stage has not advanced arguments on the compliance of mandatory provisions in respect of the raid. However, he submits that for the purpose of bail, Section 37 of the N.D.P.S. Act will not come in the way of the Applicant's release on bail because the quantity of ganja found with the Applicant was more than small

quantity but less than commercial quantity for which no minimum sentence is provided and, therefore, rigours of Section 37 of N.D.P.S. Act will not be applicable.

5. Shri Gavand does not dispute this legal position. However, he stressed the fact that the trap and the procedure followed cannot be faulted with at this stage.

6. I have considered all these submissions. The fact that the contraband was less than commercial quantity assumes importance in this case. The investigation is already over. The rigours of Section 37 of N.D.P.S. Act will not apply in this case. The investigation is over and the charge-sheet is filed. His custody for investigation is not necessary. As pointed out by both the learned Counsel there is one antecedent against the present Applicant.

7. The offence is under the N.D.P.S. Act. The apprehension of the investigating agency of commission of similar offence in future can be taken care of by imposing stringent condition on the Applicant. Therefore, I am inclined to grant bail by imposing stringent condition. Hence, the following order :

ORDER

- (i) In connection with C.R. No.414/2019 registered with Juna Rajwada Police Station, Kolhapur, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) Looking at the prevailing circumstances, it may not be possible for the Applicant to furnish sureties immediately. Therefore, initially the Applicant is permitted to furnish cash bail for the same amount. The Applicant will have to furnish the sureties, as directed, within three months from today.
- (iii) The Applicant shall report to the concerned Police Station every Monday between 1:00 p.m. to 2:00 p.m. till conclusion of the trial.
- (iv) It is made clear that the observations made in this order are restricted for consideration of the

Applicant's application for release on bail. Legality and other aspects of the trap and merits of the matter shall be gone into independently by the trial Judge when the occasion arises.

(iv) Bail Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)