

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

CRIMINAL BAIL APPLICATION NO.1687 OF 2019

Ratan S/o Subhash Morade ..Applicant
Vs
The State of Maharashtra ..Respondent

Mr.Ayaz Khan for the Applicant.

Mr.Ajay Patil, APP for the Respondent-State.

CORAM : C.V. BHADANG, J.

**DATE : 28th OCTOBER 2020
(Through Video Conference)**

PC.

1. The applicant (Accused No.1) along with co-accused Sunderpal Rai is facing prosecution for the offence punishable under Section 15(b)(c), 17(b)(c), 18(b)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('Act' for short) in NDPS Case No.8 of 2018 before the learned Special Judge at Nashik.

2. On the basis of prior information a raid was conducted by P.I. Shri.Wagh attached to the Panchwati Police Station on 06th August 2018 in which the applicant was found to be carrying poppy straw in three plastics bags in the dickey of his pleasure motor cycle

No.MH-15-DB-6885. The total quantity of the poppy straw found in the three bags was 3 kg 150 grams (1 kg 150 grams each). The three plastic bags were accordingly numbered as A,B and C and from each of the bags three samples of 50 grams each were taken out which were numbered as A1, A2, A3, B1, B2, B3 and C1, C2, C3.

3. According to the prosecution, the applicant then led the raiding party to a room in which there were three plastic bags found containing poppy straw worth 81 kg 05 grams (25 kg 150 grams + 23 kg 750 grms + 32 kg 150 grams). The bags were numbered as D, E and F and three samples of 50 grams each, were drawn from each of the bags which were numbered as D1, D2, D3, E1, E2, E3 and F1, F2 and F3.

4. Further according to the prosecution the co-accused was also found in possession of the poppy straw worth 18 kgs 400 grams. Presently we are concerned with the applicant who is accused No.1. After investigation a charge-sheet is filed.

5. It may be mentioned that the accused No.2 has been released on bail by this Court (P.N. Deshmukh, J.) vide order dated

26th April 2019 in Bail Application No.621 of 2019. However, the applicant is not claiming any parity.

6. I have heard the learned counsel for the applicant and the learned Additional Public Prosecutor. Perused record.

7. The learned counsel for the applicant submitted that although the prosecution claims that the samples weighing 50 grams each were drawn from the six bags recovered from the applicant (three from the dickey of the motorcycle and three allegedly from the house), the inventory done before the learned Judicial Magistrate on 08th August 2028 shows that the weight in the samples drawn was from 0.04 grams to 06 grams. It is submitted that thus there is a clear discrepancy between the samples drawn by the Raiding Officer and the samples which were produced before the learned Magistrate for the purposes of the inventory. It is also submitted that there is also serious discrepancy about the seal of the samples which were sent for chemical analysis. He submits that there is also no evidence about the ownership of the house from where the three bags were allegedly recovered. The learned counsel for the applicant has placed reliance in the case of (i) Kuldeep Singh

V/s. State of Punjab¹ (ii) Union of India V/s.Mohanlal and Anr.² (iii) Omprakash @ Baba V/s. State of Rajasthan³. It is submitted that the prosecution has not *prima facie* shown exclusive possession of the applicant of the contraband articles allegedly recovered.

8. The learned Additional Public Prosecutor has submitted that the inventory before the Magistrate is conducted in accordance with Section 52(A)(2) of the said Act. It is submitted that separate samples were drawn which is the requirement of Section 52(A)(2) of the Act and there is no discrepancy as to weight in the samples drawn by the Raiding Officer and those sent to the chemical analyzer.

9. I have carefully considered the rival circumstances and the submissions made.

10. According to the prosecution three bags were recovered from the dickey of the pleasure motorcycle and three from a house which was shown by the applicant. From each of the six bags, samples weighing 50 grams were drawn and were sealed. However,

1 2010 (3) SCC (Cri) 1255

2 2016(1) MLJ (Criminal) 486

3 Criminal Appeal No.575 of 2009 dated 25.05.2009 of Supreme Court of India

the record of the inventory prepared before the learned Magistrate on 08th August 2018, *prima facie* shows that the samples were found containing poppy straw between 0.4 grams to 0.6 grams. The record mentions that the samples were resealed with the seal of the learned Magistrate. However, *prima facie* it appears from the covering letter dated 08th August 2018 that the samples A1, B1, C1, D1, E1, F1 and G1 were sent to the chemical analyzer which were weighing 50 grams and they were bearing the seal of the police station. The CA report also shows that the weight of the samples was anything between 49.9 grams to 50.2 grams. Thus *prima facie* it appears that the samples which were produced before the learned Magistrate, were not weighing 50 grams and at any rate the samples which were produced and resealed before the learned Magistrate, are not the ones which were sent to the chemical analyzer. At this stage there is also no evidence about the ownership or possession of the house from where the three bags D, E and F were recovered.

11. I am conscious of the fact that the quantity of the contraband allegedly recovered being a commercial quantity, would attract Section 37 of the said Act. However, on the basis of the identity of the samples I find that this case would be covered by Clause-(a)(ii) of Sub-Section 1 of Section 37 of the said Act.

However, I hasten to add that the observations herein are essential of a *prima facie* nature, only for the purposes of the deciding the plea for bail and the learned Special Judge, shall not be influenced by the same at the trial.

12. Hence the following order.

ORDER

(i) The applicant shall be released on bail on executing a PR Bond in the sum of Rs.25,000/- with one or two solvent sureties, in the like amount.

(ii) The applicant shall undertake to remain present before the Special Judge, Nashik during the course of the trial.

(iii) The applicant shall not tamper with the prosecution evidence/witnesses.

(v) The Criminal Application is disposed of in the aforesaid terms.

C.V. BHADANG, J.