

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.197 OF 2021

SHRAVAN PANDHARINATH TRIBHUVAN

VERSUS

THE STATE OF MAHARASHTRA

...

Mrs. Sunita G. Sonawane, Advocate for the applicant

Mr. A.M. Phule, APP for the respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 27th APRIL, 2021.

ORDER :

1 Present application has been filed under Section 439 of the Code of Criminal Procedure, 1973 by the applicant, who has been arrested in connection with Crime No.327/2020 by Vaijapur Police Station, for the offence punishable under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985. His bail application under Section 439 of the Cr.P.C. filed in Special Case No.60/2020 at Exh.5 came to be rejected by the learned Additional Sessions Judge, Vaijapur on 19.01.2021.

2 Heard learned Advocate Mrs. Sunita G. Sonawane for the applicant and learned APP Mr. A.M. Phule for the respondent. In order to cut

short it can be said that they have argued in support of their respective contentions.

3 Perusal of the First Information Report would show that the FIR has been lodged by PSI Mr. Ramesh Jadhavar, attached to Vaijapur Police Station. The Police Inspector attached to the said Police Station had received information that one Shravan Tribhuvan i.e. present applicant has taken ganja crop in his agricultural land, within the jurisdiction of village Loni (Bk) in Vaijapur Khandala shivar. Under such circumstance, after completing the formalities it was decided to have raid. The Gazetted Officer i.e. Tahsildar, Vaijapur was asked to remain present. So also, two panchas, who are the Government servants were asked to accompany the raiding party. It has been contended that they had reached to the spot around 19.30 hours and had conducted the raid in the focus of torch and mobile handset torch. It is stated that they had uprooted the ganja crop. They found that there were 107 trees of ganja. The weight of those crops and the gunny bag, in which it was filled, was around 121.37 k.gs. The value of the same was Rs.9,62,560/-. Thereafter, the FIR was lodged at 00.54 hours on 17.10.2020 and it appears that the present applicant came to be arrested at 01.12 hours on the same day.

4 Now, the entire investigation is over and charge sheet is filed.

Perusal of the charge sheet would show that apart from the panchnama that appears to have been executed on the spot, the statements are of the police persons, who were members of the raiding party. Admittedly, it appears that the present applicant was not present at the spot, when the raid was conducted. The applicant is claiming bail on two grounds i.e. on merits as well as on the medical ground. From the reports, those have been received from the Superintendent of Jail, it appears that time and again, the applicant was referred for medical examination. It also appears that during the period of custody he was required to be admitted at Government Medical College and Hospital, Aurangabad between 29.01.2021 to 01.02.2021 and after clinical examinations diagnosis is - "infective exacerbation of copd with post kochs sequelae". Though he was again directed to be got examined and present condition of the applicant was informed to this Court, it was not placed on record till today. We need not wait for the same.

5 Another glaring fact, that is, required to be noted is that the entire charge sheet would show that though the samples were taken and were sent for chemical analysis, yet, the C.A. report was not produced along with the charge sheet. Though there is inventory certificate issued by Judicial Magistrate First Class (Court No.1), Vaijapur, the said certificate is most important and without the said report it cannot be stated that the substance, that was seized, was in fact a narcotic drug. At the time of taking

cognizance of the offence the Special Court will have to consider, as to whether there is sufficient material before it placed through charge sheet to take cognizance of the offence. Merely because the police authorities are saying that the trees, those were uprooted by them, were ganja crops, we cannot presume it to be so, unless it is supported by the certificate issued by the Chemical Analyzer. Reliance can be placed on the decision in **Sunil Vasantrao Phulbande and another vs. State of Maharashtra, 2002(3) Mh.L.J., 689**, wherein it has been observed that -

“The Charge-sheet/report as contemplated under section 173(5) of the Criminal Procedure Code, forwarded to the Magistrate should be such that on the basis of which Magistrate should be able to proceed further and take cognizance. The documents, which are required to be accompanied with the charge sheet/report as contemplated under sub-section (5) of section 173 of the Code, therefore, assume importance, without which charge-sheet/report submitted by the Police under section 173 of the Code would be incomplete and Magistrate also may not be in a position to proceed to take cognizance on the basis of the said report. The concept of filing of charge-sheet by the Police in the Court must fulfill requirement of section 173(2) and (5) of the Code and it is only after such compliance, report which is filed by the Police in the Court can be construed as complete report under section 173(2) and (5) of the Code. In a given case, certain documents, which are formal in nature, if not accompanied with the report/charge-sheet may not change the nature of report/charge-sheet contemplated under section 173(2) and (5) of the Code particularly when material is sufficient for the

Magistrate to take cognizance of the offence as per provisions of the Code. In prosecution for the offences punishable under sections 20, 22 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985, the Chemical Analyser's report which was the basis for deciding whether substance which was seized during raid was Ganja or not, which would determine whether provisions of the Narcotic Drugs and Psychotropic Substances Act are attracted or not was not filed with the charge-sheet as filed. The Magistrate in such situation undoubtedly cannot proceed to take cognizance of the offence for want of incomplete charge-sheet/report and, therefore, the charge-sheet/report which was submitted by the Police in the Court on 04.08.2001 could not be said to be a charge-sheet/report as contemplated under section 173(5) of the Criminal Procedure Code."

6 Therefore, taking into consideration this aspect that at the time of alleged raid the applicant was not present and at the time of filing of the charge sheet the C.A. report was not produced, case is made out to allow the bail application. On the basis of this kind of material the applicant need not be asked to linger in jail. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicant Shravan Pandharinath Tribhuvan, who has been arrested in connection with Crime No.327/2020 by Vaijapur Police Station,

for the offence punishable under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985, be released on PR. of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

3 The applicant shall not tamper with the evidence of the prosecution, in any manner.

4 He shall not indulge in any criminal activity.

5 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

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