

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.145 OF 2021

Balasaheb Bhanudas Khedkar,
Age 47 years, Occupation Agriculture,
R/o : Dongare Vasti, Eknathwadi,
Tq. Pathardi District Ahmednagar. **...Applicant**

VERSUS

The State of Maharashtra. **...Respondent**

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Advocate for Applicant : Mr. Joydeep Chatterji
APP for Respondent-State : Mr. A. V. Deshmukh.
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 31-03-2021.

ORDER :

1. Applicant is apprehending his arrest in connection with Crime No.925 of 2020, registered on 09-12-2020, with Pathardi Police Station, District Ahmednagar, for the offence punishable under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Hereinafter referred to as "NDPS Act") ; therefore, he has filed present application under Section 438 of the Code of Criminal Procedure.
2. Heard learned Advocate Mr. Joydeep Chatterji for applicant and

learned Additional Public Prosecutor Mr. A. V. Deshmukh for respondent-State.

3. It has been vehemently submitted on behalf of the applicant that the applicant is innocent. In fact, perusal of the First Information Report would show that a secret information was received and then the raid was conducted in the field of co-accused where 'Ganja' plants were found, and then it is stated that, again next information regarding the plantation of the 'Ganja' tree in the field of the applicant was received and raid was effected. It is alleged that 24 plants of Ganja weighing 38 Kilo 750 Grams with soil roots were found along with the leaves. The applicant was not present when the alleged raid was conducted. It can be seen that the mandatory compliance under Section 42 of the NDPS Act regarding information in writing to the superior has not been complied with in this case and on this count itself the applicant needs to be released on bail. The alleged quantity of contraband and the description thereof does not show that it was having flowering or fruiting tops, and therefore, the said contraband cannot be called as "Ganja" as per the definition in the NDSP Act. If the weight is along with the roots and soil, then the weight will have to

be restricted to the plant, and it cannot be said that, said 38 Kilo 750 Grams would be a commercial quantity. The seizure of 'Ganja' is from the agricultural land belonging to four persons including the applicant, and therefore, the applicant cannot be so implicated along with the other co-accused for conscious possession. Police were not knowing the demarcation of the field, and therefore, it appears that they relied upon the statement of the co-accused Shahaji Khedkar. That statement has no sanctity, and therefore, the applicant deserves to be released on anticipatory bail.

4. Per contra, the learned Additional Public Prosecutor strongly opposed the application and submitted that a detailed and proper panchanama has been drawn at the time of seizure. Though initially the secret information was in respect of a person from village Eknathwadi, when the raiding party went to Dongre Vasti in Eknathwadi Shivar, they found that certain leaves which were kept for drying was storing in a plastic tub. After making compliance and giving opportunity to that person to have the search of the person of the raiding party, they found that accused Vishnu Anil Dongre was possessing 4 Kilo 600 Gram Ganja plants which were dried and from his field they found six plants at one place and four plants in the

piece of land in which onion crop was taken. After taking some part for sample, the seizure was made, and thereafter, the information was received that one Balasaheb Bhanudas Khedkar and Shahadeo Raosheb Khedkar have also taken Ganja crop in their fields. Balasaheb is the present applicant. He was not found in Eknathwadi area but then from Shivaji Natha Khedkar police could identify the agricultural land of Balasaheb from whose land they have seized the Ganja crops. The weight of the roots and mud attached to it was 38 Kilo 750 Grams. Thereafter, the sample has been taken there also and the seizure has been effected. The third seizure is from the field of Shahadeo Khedkar. Thereafter, police Naik Suresh Mali who was one of the police person from the raiding party, lodged the First Information Report on behalf of State. The custody of the present applicant is required for further investigation as to from where he has taken the seeds, whether he has kept more such narcotics drugs or had taken the Ganja crop is required to be unearth. Applicant has criminal antecedents. There is Crime No.146 of 2015 for the offence under Section 379 of Indian Penal Code, registered with Shivajinagar Police Station District Pune, Crime No.150 of 2002, under Section 379 of Indian Penal Code, registered with Sinnar Police Station Tal.Sinnar District Nashik, Crime No.125 of 1997, under Section 379

of Indian Penal Code, registered with Junnar Police Station District Pune, Crime No.05 of 1998, under Section 122 of Bombay Police Act, registered with Junnar Police Station District Pune, and Crime No.09 of 2001, under Section 122 of Bombay Police Act, registered with Karad Police Station District Satara, therefore, he does not deserve extraordinary relief of anticipatory bail.

5. It is to be noted that though the First Information Report has been lodged by Police Naik on behalf of State, yet he was clear enough in saying that Police Inspector Anil Katke had given the information to the entire team and he had accompanied them and conducted the raid himself. He is the superior one in the rank. Further other persons who were the government employees were present along with him. The raid has been conducted on 09-12-2020. Further it appears that by order dated 29-12-2020 in all 12 offences including that of the present one was transferred or made over for investigation to the Anti Terrorists Squad, Mumbai. Now the learned Advocate for the applicant has raised a point that compliance of Section 42 (2) of the NDPS Act which is a mandatory provision, has not been made. Section 42 (2) of the NDPS Act runs thus : -

"42 (2) - Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior."

It mandates that the officer taking down any information in writing under Sub-section (1) shall within 72 hours send a copy thereof to his immediate official superior. The police papers do show that by General Diary Entry No.22 taken at 10.35 hours, Police Inspector Anil Katke made entry about the secret information received by him and by entry No.23 at 10.40 hours, it is stated that he has given information to Superintendent of Police Ahmednagar, Additional Superintendent of Police, Ahmednagar and Sub-Divisional Police Officer, Shevgaon Division, and then by Entry No.25, he had sent one police person to get two government employees as panchas. Further two entries have also been taken which have been reflected in the First Information Report. Thus, prima facie there appears to be compliance of the said mandatory provision.

6. The allegation against the applicant are serious. Young generation is the most affected generation of which many persons have been addicted to the narcotics drugs, and therefore, when

investigation is required in respect of such offences, the extraordinary power under Section 438 of the Code of Criminal Procedure should be rarely used. Definitely the raiding party depended on the information supplied to them by the adjoining owner regarding whose land it is and from where the boundaries start. Therefore, at this stage we cannot jump to the conclusion that the said co-accused or adjoining owner had given something misleading to the raiding party. Therefore, the physical custody of the applicant is required for the purpose of investigation. No case is made out to grant anticipatory bail, hence application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-