

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.234 OF 2021

Hullappa @ Babu s/o Shivram Pole,
Age 60 years, Occupation Agri.,
R/o Poicewadi Tq. Loha District
Nanded.

**.....Applicant
(Orig.Accused No.1)**

VERSUS

The State of Maharashtra.

.....Respondent

.....
Advocate for Applicant : Mr. V. B. Dhage.
APP for Respondent : Mr. A. M. Phule.
.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 27-04-2021.

ORDER :

1. Present applicant is accused No.1 who came to be arrested in connection with Crime No.215 of 2020, by Loha Police Station, District Nanded, for the offence punishable under Section 20 (i) (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985. The present application has been filed under Section 439 of Code of Criminal Procedure.

2. Heard learned Advocate Mr. V. B. Dhage for applicant and learned Additional Public Prosecutor Mr. A. M. Phule for respondent-

State.

3. It has been vehemently submitted on behalf of the applicant that the prosecution has come with a case that raid was conducted in pursuant to the secret information that was received by Sub-Divisional Police Officer Shri. Kishor Kamble. The information that was received was that certain farmers have taken 'Ganja' crop in their fields. Thereafter, when the raid was conducted in presence of Gazetted Officer and the panchas in the field of present applicant Hullappa @ Babu s/o Shivram Pole, they found 104 Ganja trees having five to six feet height and that crop was taken in cotton crop. Those crops were uprooted and weighed. The Ganja was weighing 129.200 kilogram worth of Rs.3,87,600/-. The sample was taken and muddemal was seized, thereafter the First Information Report came to be lodged.

4. The learned Advocate for the applicant vehemently submits that the rules of seizure and mandatory compliance under Section 42, 43 and 50 are not at all followed at the time of seizure. Thereafter there is delay of three days in forwarding the seized muddemal to the Magistrate. The applicant is in fact a handicapped person and cannot work in the agricultural land. His sons are in-

charge of all the agricultural operations. He had no knowledge at all about the crop that is taken in his field. Now the investigation is over and charge-sheet is filed, therefore the physical custody of the applicant is not required at all, he deserves to be released on bail.

5. Per contra, the learned Additional Public Prosecutor has strongly opposed the application on the ground that the perusal of the charge-sheet would show that the applicant who is the owner of the land has illegally cultivated the 'Ganja' crop in his cotton crop. Taking into consideration the number of crops those were found, it cannot be said that it was by mistake, it appears to be the intentional thing. It is for the accused to prove that he had no knowledge about which crops have been taken in his field. The Narcotic that is found in the field of the applicant is in huge and commercial quantity. The entire young generation is affected and, therefore, he deserves no sympathy at all. Learned Additional Public Prosecutor prayed for rejection of the application.

6. At the outset, there can be no other opinion that the Narcotic Drugs is menace to the society and it is affecting the general health of public, especially the young generation. Addiction to the such Narcotic Drugs is hazardous and, therefore, whoever is involved in

manufacture, distribution and sale as well as consumption, will have to be dealt with sternly.

7. Now the investigation is over and charge-sheet is filed. Therefore, the further physical custody of the applicant is not required for the purpose of investigation. But we are required to now consider, what evidence is collected against the present applicant ? and whether the point that is raised in respect of non-compliance of mandatory provisions of Section 42, 43 and 50 of the Narcotic Drugs and Psychotropic Substances Act, would give any kind of benefit to the present applicant ? and whether he can be released on bail ? Section 42 of the Narcotic Drugs and Psychotropic Substances Act deals with power of entry, search, seizure and arrest without warrant or authorisation. The raid has been conducted by ASI Ashroba Limbaji Ghate in presence of Police Inspector, Police Station, Loha, Shri. Bhagwat Jaybhaye, therefore it cannot be said that there is any non-compliance of Section 42 (1) of the Narcotic Drugs and Psychotropic Substances Act. Further he has produced on record the communication between him and Sub-Divisional Police Officer Shri. Kishor Kamble, who is his superior. So, this is the compliance of Section 42 (2) of the Narcotic Drugs and Psychotropic

Substances Act. Section 43 of the said Act deals with power of seizure and arrest in public place. At the outset, it is to be noted that search and seizure in this case was in the field of the applicant which cannot be said to be a public place and, therefore, Section 43 of the Narcotic Drugs and Psychotropic Substances Act may not be applicable here. Section 50 of the Narcotic Drugs and Psychotropic Substances Act deals with conditions under which search of person shall be conducted. Again it can be said that when the search and seizure was in respect of crop grown in the field, Section 50 of Narcotic Drugs and Psychotropic Substances Act may not be applicable. No doubt, all these points would be open for the applicant to raise during the course of the trial but prima facie these points are not the ground on which he can be released on bail.

8. As regards his ignorance about the crops those are grown in his field are concerned, it is for him to prove it. The 7/12 extract produced on record shows that the land stands in his name. The co-accused are his sons. 7/12 extract does not say that the cultivation is by the sons. Therefore, taking in to consideration these facts and in fact there is nothing on record except the statement in the arrest pacnhanama that there are signs of paralysis towards the left part of

body, there is nothing on record to show that he is handicapped. The applicant has not produced on record certificate by any doctor stating that his present physical condition is such that he cannot do any agricultural operations. This fact can also be taken in another way that in spite of he being handicapped, if he commits such kind of offence then he deserves no sympathy at all. No case is made out to grant bail to the applicant taking into consideration the seriousness of the offence, the quantity that is seized and the way the crop has been taken, he is not entitled for getting the bail, hence application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-