

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

913 BAIL APPLICATION NO. 879 OF 2021

1. Bhagwan s/o. Hullappa Pole
Age : 31 years, Occu : Labour,
R/o. Policewadi, Tq. Loha, Dist. Nanded

2. Keshav s/o. Hullappa Pole,
Age : 29 yrs, Occu : Labour,
R/o. Policewadi, Tq. Loha,
Dist. Nanded.

... APPLICANTS

VERSUS

The State of Maharashtra
Through Loha Police Station,
Tq. Loha & Dist. Nanded.

Smt. Rashmi Kulkarni, Advocate h/f Shri. G. R. Ingole,
Advocate for the applicants
Shri. V. M. Kagne, APP for the respondent/State

**CORAM : M. G. SEWLIKAR, J.
DATED : 22nd OCTOBER, 2021**

PER COURT :-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicants on bail in CR No. 215 of 2020 registered with Loha Police Station, District Nanded under Sections 20(1)(b), 34 of the NDPS Act.

2. Facts giving rise to this application are that on

23rd October, 2020 the complainant who is Assistant Police Inspector received the tip off that one Babu Shivram Pole had cultivated cannabis plants. Therefore, the complainant and other staff raided the said spot i.e. gut No. 228. Babu Shivram Pole is also called as Hullapa Shivram Pole. When the complainant and the staff raided gut No. 228 at village Ramchiwadi they found that cannabis plants were grown in the said field. Search was conducted in the presence of Executive Magistrate Shri. Paralikar. Total plants grown by the applicant were 104 in number. Their value was of Rs. 3,87,600/-. Their weight was 129.200 Kilograms. Accordingly samples as contemplated under NDPS Act were collected. After disclosure of the offence charge-sheet came to be filed against the accused Hullapa Shivram Pole. At that time applicants were shown absconding. Later on, supplementary charge-sheet came be filed against the applicants. Applicants were arrested. Applicants are the sons of accused Hullapa Shivram Pole.

3. Learned counsel Smt. Kulkarni for the applicants submits that the cultivation cannabis plant is punishable with

rigorous imprisonment for ten years and fine of Rs. 1 lakh. She submits that the offence is not punishable with death or imprisonment for life. She further submits that the 7x12 extract stands in the name of accused Hullapa Shivram Pole. Applicants have no concern with the said land. She submits that, therefore, applicants cannot be attributed with the knowledge that the possession was conscious possession. She placed reliance on the case of *Ashok S/o Khemsing Mundhe (Munde) Vs. The State of Maharashtra in Bail Application No. 1631 of 2018 of this Court (Coram – Mangesh S. Patil, J.)*. She also placed reliance on the case of *Hari Mahadu Valse Vs. The State of Maharashtra in Bail Application No. 2299 of 2019 of this Court (Coram – Smt. Anuja Prabhudessai, J.)*

4. Learned APP Shri. Kagne submits that the applicants are the sons of the accused Hullapa Shivram Pole. He submits that the statements of the witnesses have been recorded. Those statements reveal that accused Hullapa Shivram Pole is a handicapped person and therefore, applicants are cultivating the land. He further submits that

application of Hullappa @ Babu s/o Shivram Pole has been rejected by this Court (Coram – Smt. Vibha Kankanwadi, J.) in Bail Application No. 234 of 2021 and the same has been challenged before the Hon’ble Supreme Court. He, therefore, prays for rejection of the application.

5. In terms of Section 20(b)(i) cultivation of cannabis plant is punishable with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine of Rs. 1 lakhs. Thus, this make it clear that the offence of cultivation of cannabis plant is an offence within the meaning of Section 20(a) of the NDPS Act and it is punishable with imprisonment for ten years.

6. Alongwith the charge-sheet, prosecution has produced copy of 7x12 extract which shows that gut No. 228 at village Ramchiwadi is in possession of accused Hullappa @ Babu Shivram Pole. It is the argument of learned APP that accused Hullappa @ Bau Shivram Pole is a handicapped person. Nothing has been placed on record to show that he is handicapped person and he is unable to cultivate the land

personally. Simply on the basis of some statements of the witnesses including Police Patil, it is tried to be argued that the applicants are also in possession of the said land and therefore, they are also in conscious possession of the cannabis plant. This question can be gone into during the trial. When there is documentary evidence showing that the applicants' father Hullapa @ Babu Shivram Pole is the owner in possession of the land gut No. 228, it cannot be concluded at this prima facie stage that the applicants are cultivating the land. Without therein being any evidence they cannot be fastened with the knowledge of conscious possession of cannabis plant. In order to invoke provision of Section 37 of NDPS Act offence ought to be under Sections 19 or 24 or 27(a) and offence involving a commercial quantity. In the case at hand, the offence charged against the applicants is under Section 20. Therefore, the present case does not come within the scope of Section 37 of the NDPS Act. Nothing has been placed on record to indicate that applicants have criminal antecedents. Therefore, it cannot be said that they are likely to commit similar offence

again. In this view of the matter, applicants are entitled to bail. Hence the order.

ORDER

1. Application is allowed.
2. Each of the applicants be released on bail on their furnishing PR bond of Rs. 30,000/- (Rupees Thirty Thousand only) with one solvent surety in the like amount in connection with CR No. 215 of 2020 under Sections 20(1) (b), 34 of the NDPS Act registered with Loha Police Station, Dist. Nanded.
4. It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.
3. Application is disposed of.

[M. G. SEWLIKAR, J.]

ssp