

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

940 BAIL APPLICATION NO.960 OF 2021

RAJENDRA SHANKAR SONAWANE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Sonar Anudeep D.
APP for Respondents/State : Mr. S.D. Ghayal
...

CORAM : M.G. SEWLIKAR, J.
DATE : 26th October, 2021

PC.:-

This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail.

2. It is prosecution's case that one person by the name of Rajendra Shankar Sonawane had stored Ganja near Sule Phata Bus Stand on Mumbai-Agra Highway No.3. Accordingly, the said spot was raided. Applicant was found there with two plastic gunny bags. On seeing the Police party, applicant ran away. He was chased and arrested. He told his name as Rajendra Shankar Sonawane. On taking search of those gunny bags, Ganja weighing 26 kgs. was found. Samples were taken and after disclosure of the offence, charge-sheet came to be filed in the Special Court.

3. Heard Shri A.D.Sonar learned counsel for the applicant and Shri S.D.Ghayal learned APP for the respondent-State.

4. Shri A.D.Sonar, learned counsel for the applicant submits that provisions under Section 42(2) of the Narcotic Drugs and Psychotropic Substances (NDPS) Act have not been followed. He submits that whenever search is carried out, even at public place and contraband articles are seized, intimation of it has to be given to the superior officer within a period of 48 hours. This provision has been given a go-by. He submits that even at the stage of bail application, compliance of Section 42(2) of the NDPS Act can be gone into. He placed reliance on the case of *Sarija Banu (A) Janarthani alias Janani and another Vs. State through Inspector of Police [2004 AIR (SCW) 7488]* and on the case of *Bipin Kumar Ramsagar Pandit @ Saxena Vs. State of Maharashtra [2014(1) Bom.C.R.(Cri.) 486]*.

5. Shri S.D.Ghayal, learned APP for the respondent-State submits that the report was immediately made to the Police Station regarding occurrence of the incident. He submits that this is a compliance of Section 42(2) of the NDPS Act.

6. In the case of *Sarija Banu (A) Janarthani alias Janani and another* (supra), it has been observed that:

“7. It is pertinent to note that in the bail application the appellants, it was alleged, that there was serious violation of Section 42 of the Narcotic Drugs and Psychotropic Substances Act. In the impugned order nothing is stated about the alleged violation of Section 42, and it is observed that it was not necessary to consider such violation at this stage. The compliance of Section 42 is mandatory and that is a relevant fact which should have engaged attention of the Court while considering the bail application.”

7. Thus, in view of this decision of the Hon’ble Apex Court, it is clear that even at the stage of bail application, the question of non compliance of Section 42 can be gone into.

9. Section 42(1) mandates that when any information is received in the police station that has to be recorded in writing by the officer receiving it. Section 42(2) of NDPS Act mandates that copy of such information shall be sent to the immediate superior of the officer who recorded the information.

10. In the case at hand the officer who recorded the information is Police Inspector, therefore, the secret information ought to have been forwarded to his immediate official superior within a period of 72 hours. It is pertinent to note that offence took place at public place i.e. on the road. It was argued that if offence takes place at public place, Section 42 will not come into play as Section 42 requires the premises to be searched. Since it is

from open space the question of application of Section 42 will not arise. To counter this argument learned counsel Shri Sonar placed reliance on the case of ***Bipin Kumar Ramsagar Pandit*** cited (*supra*) in which it is observed that even if incident takes place at the public place still compliance of Section 42 is mandatory. Following are the observations:-

“15. A perusal of the decided authorities indicates that sections 42 and 43 operate on different planes and that where an officer is acting on information, the provisions of section 42 would be applicable irrespective of whether the information is in respect of the commission of an offence in a public place of the type mentioned in the explanation to section 43. Whether the provisions of section 42 would apply, does not depend on whether the search and seizure is effected or to be effected, from a public place of the type mentioned in the explanation to section 43, but on whether the officers are acting on information. Whether the empowered officer/s is/are acting on prior information, the provisions of section 42 would come in play and consequently the officer receiving the information must necessarily take it down.”

11. From this authoritative pronouncement, it is evident that even if offence takes place at public place, compliance of Section 42 is mandatory. Therefore, it was obligatory on the part of the Investigating Officer to comply with the provisions of Section 42 (1) and (2). Admittedly, this compliance is not done. Therefore, there is no possibility of conviction. The case, therefore,

falls out of the rigors of Section 37 of the NDPS Act. Having regard to this, I am inclined to release the applicant on bail. Hence the following order is passed:

ORDER

- I) Application is allowed.
- II) Applicant be released on PR bond of Rs.50,000/- with one solvent surety in the like amount, in connection with Crime No.79 of 2020 under Section 8(c), 20 and 22 of the N.D.P.S. Act registered with Shirpur Taluka Police Station, District Dhule.
- III) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]