

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 BAIL APPLICATION NO.1378 OF 2020

NATHRAO DEVRAO MUNDE
VERSUS
THE STATE OF MAHARASHTRA

...

Mr. A.B. Ghule, Advocate for the applicant

Mr. S.B. Narwade, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 03rd FEBRUARY, 2021.

ORDER :

1 Present applicant has been arrested, in connection with Crime No.157/2020 dated 07.11.2020 by Pimpaldari Police Station, Tq. Gangakhed, Dist. Parbhani, for the offence punishable under Section 20(a)(b)(1) and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985. He has filed present application under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. A.B. Ghule for the applicant and learned APP Mr. N.B. Narwade for the respondent.

3 It has been vehemently submitted on behalf of the applicant that

the applicant is a 75 years old agriculturist, who was found taking ganja crop in his agricultural land bearing Gat No.64 and 65 at village Dongarjawala. The applicant admits that he is the owner of the said land, however, no offence can be said to be made out against him, as the plants, which have been seized, had no flowering of the fruiting tops. In order to include it in the definition of ganja as per the Section 2 of the N.D.P.S. Act it should be shown that the cannabis plants having flowering of the fruiting tops existing seeds and leaves only would be called as ganja. Further, mandatory provisions have not been followed. The applicant is suffering from Renal Carcinoma. There are no criminal antecedents of the applicant. If he is not released on bail, then it would amount to pre trial conviction. The applicant is ready to abide by the terms of the bail.

4 Learned APP strongly opposed the application. It is submitted that after the information was received the raid has been conducted. The applicant is the owner of two pieces of lands Gat Nos.64 and 65, which are adjacent to each other. He had taken cotton and tur crop. However, in between the cotton crop as well as tur crop, it was found that he has taken ganja crop i.e. the cannabis plants were there. Three plants were seized from Gat Nos.34 and 21 plants from Gat No.65 which were still green and 5 from Gat No.65 were dried plants. The total plants, those were seized, were 35

having flowering tops worth Rs.1,55,000/-. Now, the C.A. report has been received, which shows that they are the ganja plants (cannabis plants). Exhibit Nos.2 and 4 i.e. plant (cut) having green colour leaves, stalk, stem without roots are said to be ganja. Further, the photographs would also show that it had flowering tops. Inventory has also been carried out through Judicial Magistrate First Class, Gangakhed (Court No.2) on 09.11.2020. Therefore, there is ample evidence against the present applicant to show that he was cultivating narcotic drug. Though he is 75 years old person he cannot have sympathy, therefore, his application deserves to be rejected.

5 At the outset, it can be seen that it was represented to this Court that a discharge card of Vivekanand Hospital, Latur was produced before the Superintendent of Jail, which showed that he has undergone 12 cycles of chemotherapy. Therefore, the report was called and accordingly the report has been submitted that as per the discharge card the under trial would be taken to the concerned hospital after every two months and he would be given further medical aid. When this assurance is given that further medical aid would be given to the applicant, then that only cannot be the ground. Further, at this stage itself, it can be said that if and when the occasion arises, the said medical aid can be given to him. At present there appears to be only follow up, that is required.

6 As regards the merits of the case is concerned, the evidence, that is collected against the present applicant, is that about 35 cannabis plants with 35 flowering with fruiting tops were seized from his land Gat Nos.64 and 65. The other mandatory provisions *prima facie* appeared to be complied with. The photographs were called when disputes were raised, which show to some extent the flowering of fruiting tops. As regards the inventory is concerned, it says about the cannabis plants, some are only sticks/twigs of the plants having no leaves. C.A. report has also been received stating that the plants are cannabis plants. Even if for the sake of argument if we consider that it does not attract Section 2(iii)(b) of the N.D.P.S. Act, yet it would definitely be then come under Section 2 (iv) of the N.D.P.S. Act, which defines cannabis plant as - “cannabis plant” means any plant of the genus cannabis. Therefore, at this stage much deliberation cannot be made, as to whether what has been seized here would be ganja or not. It can be ganja or it may come under the definition of cannabis plant. Therefore, when there is evidence against the present applicant, his age and health will not give him any advantage. The offence under N.D.P.S. Act is a serious offence, as the narcotic drugs are destroying the young generations of this country. Further, it can be seen that such plants are grown in a remote village in Marathwada itself shows the severity in the offence. Further, it has been stated in the FIR that on inquiry it was revealed that after drying the flowering of fruiting tops,

it is sold to the people @ Rs.500/- to Rs.1,000/- per 50 grams. Therefore, taking into consideration the said seriousness in the offence no case is made out, however, at the same time, directions can be given to the Special Judge that he should ensure that proper medical treatment is given to the applicant, as and when required and if occasion arises, taking into consideration the health of the applicant, then liberty is given to the applicant to approach the Special Judge for bail. With these observations, application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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