

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

**929 BAIL APPLICATION NO.1131 OF 2021**

Pandurang Nagoba Khandade  
Age: 66 yeas, Occu.: Agriculture,  
R/o. A/p.Guntur,  
Tq.Kandhar, Dist.Nanded. ..Applicant

VERSUS

The State of Maharashtra,  
Through Police Station Officer,  
Kandhar Police Station,  
Kandhar, Dist.Nanded. ..Respondent

...  
Advocate for Applicants : Ms.Pradnya Talekar h/f.  
M/s.Talekar and Associates  
APP for Respondent : Shri N.T.Bhagat

...  
**CORAM : M.G.SEWLIKAR, J.**

**DATE: 16<sup>th</sup> November, 2021**

**PER COURT:-**

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No.121 of 2021 registered with Kandhar Police Station, District Nanded, under Section 20(a)(b) of the Narcotic Drugs and Psychotropic Substances (NDPS) Act.

2. Facts leading to this application are that the informant, who is Police Sub-Inspector (PSI) received a tip-off that one person had grown Ganja in his field. On raiding the said spot, crop of Ganja was found grown in the field bearing Survey No.266

situated at village Guntur, Tq.Kandhar, District Nanded. On weighing the cannabis plants, the weight was found to be of 23 Kilo 186 Grams amounting to Rs.1,15,930/-. Applicant, according to the prosecution's case, is the owner of the said field and he had according to the prosecution's case, grown the said cannabis plants. Usual procedure of taking samples was followed and after completion of usual formalities, FIR came to be lodged under the aforesaid Section. Applicant was arrested.

3. Heard Ms.Pradnya Talekar, learned counsel for the applicant and Shri N.T.Bhagat, learned APP for the respondent-State.

4. Ms.Talekar, learned counsel for the applicant submits that charge-sheet has been filed but it is without CA report. She submits that filing of charge-sheet without CA report is incomplete charge-sheet and cognizance on the basis of such incomplete charge-sheet is impermissible. For this purpose she placed reliance on the decision of this Court (Coram : Smt.Vibha Kankanwadi J.) in the case of *Lakhan s/o Deepak Jedhe Vs. The State of Maharashtra* (Bail Application No.318 of 2021 and connected matter).

5. Learned APP for the respondent-State submits that huge

quantity of cannabis plants was found in possession of the applicant. He submits that offence being serious in nature, applicant may not be released on bail.

6. In the case of **Sunil Vasantrao Phulbande and Another Vs. State of Maharashtra [2002 (3) Mh.L.J. 689]**, it has been observed by this Court as under:

*“The Charge-sheet / report as contemplated under Section 173 (5) of the Criminal Procedure Code, forwarded to the Magistrate should be such that on the basis of which Magistrate should be able to proceed further and take cognizance. The documents, which are required to be accompanied with the charge-sheet/ report as contemplated under sub-section (5) of section 173 of the Code, therefore, assume importance, without which charge-sheet / report submitted by the Police under section 173 of the Code would be incomplete and Magistrate also may not be in a position to proceed to take cognizance on the basis of the said report. The concept of filing of charge-sheet by the Police in the Court must fulfill requirement of section 173 (2) and (5) of the Code and it is only after such compliance, report which is filed by the Police in the Court can be construed as complete report under section 173 (2) and (5) of the Code. In a given case, certain documents, which are formal in nature, if not accompanied with the report/ charge-sheet may not change the nature of report/charge-sheet contemplated under section 173 (2) and (5) of the Code particularly when material is sufficient for the Magistrate to take cognizance of the offence as per provisions of the Code. In prosecution for the offences punishable under*

*sections 20, 22 and 25 of the Narcotic Drugs and Psychotropic Substances Act 1985, the Chemical Analyser's report which was the basis for deciding whether substance which was seized during raid was Ganja or not, which would determine whether provisions of the Narcotic Drugs and Psychotropic Substances Act are attracted or not was not filed with the charge-sheet as filed. The Magistrate in such situation undoubtedly cannot proceed to take cognizance of the offence for want of incomplete charge-sheet/ report and, therefore, the charge-sheet / report which was submitted by the Police in the Court on 4-8-2001 could not be said to be a charge-sheet/ report as contemplated under section 173 (5) of the Criminal Procedure Code. The applicants who were in Police custody for more than 90 days from 24-06-2001 the date of first remand were therefore entitled to be released on bail as prayed by application made on 31-10-2001 since prosecution failed to file charge-sheet/ report within the stipulated period as contemplated under section 167 (2) of the Code."*

7. Admittedly, CA report is not filed. Ms.Talekar, learned counsel submits that even after presentation of charge-sheet, CA report is not filed.

8. From the above observations, it is evident that it is impermissible for the Courts to take cognizance of the offence on the basis of charge-sheet without CA report.

9. In view of this position, it does not appear that there is a *prima-facie* case against the applicant as to bring within the

domain of Section 37 of the NDPS Act. There is nothing on record to show that the applicant will repeat the same offence. He does not have criminal antecedents. This appears to be his first offence. Applicant is not likely to flee from justice. In this view of the matter, I am inclined to release the applicant on bail. Hence, the order :

**ORDER**

- i) Bail Application is allowed.
- ii) Applicant be released on P.R.Bond of Rs.50,000/- (Rs. Fifty thousand only) with one solvent surety in the like amount, in connection with Crime No.121 of 2021, registered with Kandhar Police Station, Dist.Nanded, under Section 20(a)(b) of the NDPS Act, and on condition that he shall not pressurize the witnesses and shall attend the dates fixed in the trial.
- iii) Bail Application is disposed of.
- iv) 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.

**( M.G.SEWLIKAR )**  
**JUDGE**