

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.964 OF 2021

Jarichand Vishwanath Kumbhar,  
Age 70 years, Occ.Nil, R/o.Village Bavi,  
Tal.Madha, District Solapur.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Tapan Thatte along with Mr.Dilip Shinde, Ateet Mhambrey,  
Shantanu Adkar for applicant.  
Mr.Y.M.Nakhwa, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 25<sup>th</sup> March 2021

PC :

1. The applicant is arrested in CR No.324 of 2020 registered with Madha Police Station for offences punishable under Sections 8(c), 20(b) and Section 22 of Narcotic Drugs and Psychotropic Substances Act.

2. The case of the prosecution is that the complainant Prakash Shivaji Manjre is Police Head Constable attached to Madha Police Station. On 2<sup>nd</sup> November 2020 while he was on duty at the Police Station, he received information from Assistant Police Inspector that secret information was received that Bandu Audubmar More and Jarichand Vishwanath Kumbhar that they are cultivating Ganja trees in their agricultural land situated at Vadachi Wadi. The complainant was also informed that information has been submitted to the superior officer. The complainant was instructed to come in front of

Gram Panchayat office along with two panch witnesses. The complainant reached the spot along with two panchas. The other Police Constables came with photographer, weighing machine and other articles. They were apprised about the information received by Police. The panch witnesses agreed to act as panch. All of them proceeded towards agricultural land. On reaching the residential area of Bandu More, they found one person standing in the agricultural field. He was questioned and he gave his name as Bandu Audumbar More. Inquiry was made with him about the ownership of agricultural field. He stated that agricultural land stands in his name. He is cultivating the said land. The raiding party then inspected the agricultural field. They found some plants cultivated in the field. They removed the plants and took smell of the leaves and they suspected that they were Ganja trees. The weight of the plants uprooted by them was 38 kgs 600 grams. They clicked photographs. They seized the Ganja trees. The value of Ganja was calculated to be Rs.1,93,000/-. The raiding party took samples of the plants. Bandu More was taken in custody. Thereafter they proceeded to the agricultural field of Jarichand Vishwanath Kumbhar. They found one person standing in the field. After noticing the raiding party he managed to run away from the place of field. The raiding party made enquiry with some women who were present near the place of incident and they disclosed name of that person as Jarichand Kumbhar, r/o.Bavi, Taluka Madha. The raiding party then entered into the field and noticed plantation of Ganja trees. They uprooted those trees and after they smell the leaves they suspected them to be Ganja trees. The weight of the Ganja trees was 95 kgs 300 grams. The value of the plants was found to be Rs.4,76,500/-. The complaint was lodged on 2<sup>nd</sup> November 2020.

The applicant was arrested on 8<sup>th</sup> December 2020. On completing investigation charge sheet was filed.

3. The applicant preferred application for bail before the Court of Sessions Judge, at Barshi. The said application was rejected by order dated 5<sup>th</sup> February 2021. While rejecting the application learned Sessions Judge had observed that the Muddemal is seized from the field of the accused. It is of commercial quantity. The accused has planted cannabis trees with intention to sell i.e. for commercial purposes. If the accused is released on bail, there is possibility of his absconding. There is possibility of commission of similar type of offence.

4. Learned advocate for the applicant submitted that the applicant is a senior citizen aged about 70 years. He has been falsely implicated in this case. There is no evidence to show involvement of applicant in the offence. The case of prosecution is based on surmises. The learned Judge has wrongly arrived at conclusion that the applicant had planted cannabis trees with intention to sell. The land does not belong to the applicant. There are no criminal antecedents against applicant. The raiding party had uprooted the entire plant from the agricultural field and weighed the same. The total weight is calculated as commercial quantity.

5. Learned APP submitted that there is direct evidence against applicant. The information was received that applicant is cultivating Ganja plantation. When the raiding party visited the agricultural field of the applicant, he managed to run away from the field. On inspection it was found that Ganja plantation was cultivated in the

field. The quantity was huge. It was a commercial quantity. In view of Section 37 of NDPS Act, the applicant is not entitled for bail. The ladies who were present at the scene of offence had disclosed the name of applicant as the person who had fled from the agricultural field on noticing that raiding party has visited the field. The offence is of serious nature. Hence, Bail Application may be rejected.

6. The case of prosecution is that information was received by Police that Bandu More and Jarichand Kumbhar are cultivating Ganja plants in their agricultural fields. On receipt of information the raiding party proceeded to the place where Ganja plants were cultivated. Initially they proceeded to the agricultural land of Bandu More. He was found present at the place of incident. Ganja plants were recovered. He was arrested. Thereafter the raiding party has allegedly visited the agricultural field of applicant. According to the prosecution one person who was present in the field, had fled away on noticing the raiding party. Some women who were present near the agricultural land has allegedly disclosed name of that person as Jarichand Kumbhar. However, the investigating authority had not recorded statement of any such witness, who had disclosed to them that person who was present in the field is applicant. Thus, identity of the person who was present in the field at the time of raid has not established beyond doubt. It is also pertinent to note that raiding party had uprooted all the Ganja plants along with leaves and the plants were weighed and found to be bearing the weight as stated in the complaint. It was expected from the raiding party that they could have measured weight of the leaves constituting cannabis/Ganja by separating them from plant uprooted by them. The information was received by raiding party that accused are

cultivating Ganja plants in their agricultural fields situated at Vadachi Wadi. The complaint or the panchanama does not describe the gut number of the place from where the Ganja plants were allegedly recovered from the field of applicant. The investigating agency has placed on record the document which refers to the property bearing Gat No.151/1/2/B is in the name of Radhabai Jarichand Kumbhar. Thus, the property was not in the name of applicant. It is alleged that the said property was in the name of wife of applicant. It is not clear as to which authority has issued the said document. It is also pertinent to note that panchanama or the statements of witnesses do not disclose that raid was carried out in the said property. The prosecution has also not placed on record any material to show that the applicant is cultivating the agricultural land where Ganja plants were found being cultivated. In the circumstances the rigors of Section 37 of NDPS Act would not be an impediment to grant bail to the applicant. Hence, case for grant of bail is made out.

7. Hence, I pass following order :

#### **ORDER**

- (i) Bail Application No.964 of 2021 is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.324 of 2020 registered with Madha Police Station, Solapur, on executing P.R.Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) Applicant shall report Madha Police Station, Solapur, once in three months on first Saturday of the month between 11.00 a.m. to 01.00 pm;
- (iv) Applicant is permitted to furnish provisional cash bail in the

sum of Rs.25,000/- for a period of eight weeks, in lieu of surety;

(v) Bail Application No.964 of 2021 stands disposed of accordingly.

(PRAKASH D. NAIK, J.)

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