

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL BAIL APPLICATION NO. 2707 OF 2019

Laxman Ankush Jadhav	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Harshad Sathe i/b Mr. Saurabh Butala for the Applicant

Mr. A. R. Patil, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.

WEDNESDAY, 20th JANUARY 2021

P.C. :

1 Heard learned counsel for the applicant and the learned A.P.P for the State.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 90 of 2018 registered with the Satara City Police Station, Satara, for the alleged offences punishable under Sections 20(b)(ii)(c) r/w 8(c) of the Narcotic Drugs and Psychotropic Substances Act ('NDPS Act').

3 Learned counsel for the applicant submits that the applicant was found in possession of 4 kg 200 grams of ganja, an intermediate quantity and therefore, the rigours of Section 37 of the NDPS Act would not apply and as such prays for grant of bail. He submits that applicant has no antecedents. Learned counsel relied on the judgment of the Apex Court in ***Birbal Prasad alias Birbal Prasad Sah alias Birbal Prasad Sao alias Birbal Prasad Sah vs. State of Bihar***¹ and the order of this Court in the case of ***Vivekanand Vikas Bodare vs. The State of Maharashtra***².

4 Learned A.P.P opposes the application. He submits that the applicant, who was riding a bike, was found in possession of 4 kgs 200 grams of ganja, and that at the same time, in another car (Santro), 82 kgs ganja was seized. He submits that the total quantity seized from the Santro Car and the bike is 86 kgs 100 grams, which is a commercial quantity, thus, disentitling the applicant for bail.

5 Perused the papers. It is alleged by the prosecution that on 7th February 2019, the police received confidential information that two persons would be carrying ganja in a Santro Car No. MH-11-Y-3796 and

1 (2018) 11 SCC 488

2 Criminal Bail Application No. 995/2019 dated 27/1/2020

on a two-wheeler bearing No. M-11-AS-1541, to Satara City. Pursuant to the said information, the police laid a trap and both the vehicles i.e. a bike (which the applicant was riding) and a Santro Car were caught and total ganja weighing 86 kgs 100 grams were seized from both the vehicles. The applicant was driving the bike and from his possession, 4 kgs 200 grams ganja was seized and from the Santro Car, which was driven by the co-accused, 81 kgs 900 grams of ganja was seized.

6 Although learned A.P.P submitted that the total seizure of ganja will have to be considered since it emanated from a common information, having perused the judgments relied upon by the learned counsel for the applicant, the said contention will have to be rejected. This Court (Coram : Prakash D. Naik, J.) in Criminal Bail Application No. 995/2019 (Supra), has dealt with a similar situation i.e. that the information was common and that the raid was conducted at the same time. This Court, after considering several judgments, observed that *prima facie*, there was no evidence to show that the accused therein were acting in connivance with each other and there is conspiracy to commit the crime and or there was meeting of mind to commit alleged act. In the said case, Section 29 of the NDPS Act was invoked, albeit, at a subsequent stage. However, in the present case, Section 29 of the NDPS Act has not been invoked. No doubt, in the present

case, the information is common and the raid was conducted at one and the same time, pursuant to the said information received, however, *prima facie*, there is nothing on record to show that accused No. 1 and the applicant (accused No.2) who were in different vehicles, were members of a conspiracy or had acted in connivance with each other. The applicant was on a bike and was found in possession of 4 kgs 200 grams of ganja, an intermediate quantity, whereas, the accused No. 1, who was driving the Santro Car has been found in possession of 81 kgs 900 grams of ganja (commercial quantity).

7 Having regard to the quantity seized from the applicant i.e. 4 kgs 200 grams, the rigours of Section 37 of the NDPS Act would not apply. The applicant is in custody since May 2019. Investigation is complete and charge-sheet is filed. The applicant has no antecedents.

8 Considering the aforesaid, the applicant deserves to be enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or more sureties in the like amount;

- (ii) The applicant shall attend the concerned Police Station on the first Sunday of every month between 10:00 a.m. to 12:00 noon, till the conclusion of the trial;
- (iii) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (iv) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;
- (v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;
- (vii) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

9 The application is allowed in the aforesaid terms and is accordingly disposed of.

10 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

11 All concerned to act on the copy of this order, digitally signed by the Senior Private Secretary of this Court.

REVATI MOHITE DERE, J.