

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

CRIMINAL BAIL APPLICATION NO.163 OF 2020

Santosh Madhukar Shinde Applicant
Versus
The State of Maharashtra Respondent

Mr. Ganesh Gupta, Advocate for the Applicant.
Smt. A.A. Takalkar, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 08th APRIL, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.135/2019 registered at Kamothe police station, Navi Mumbai on 2.8.2019 under Sections 8(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The Applicant is arrested on 2.8.2019 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. The FIR is lodged by police constable Prafulla More. He was attached to Crime Branch, Navi Mumbai. He

has stated that on 1.8.2019, the officers received a secret information that a woman aged 30 to 35 years was to come at Khanda village for selling Ganja. The police officers arranged to conduct raid. They called panchas including a lady pancha. They went to the spot mentioned in the information. At about 8:30 p.m., they saw the woman described in the secret information. She was apprehended. She was told about her rights under Section 50 of the NDPS Act. She was found to carry a plastic bag containing Ganja. It was tested on the testing kit. The result showed that it was Ganja. It was found to be of 2 kg & 325 grams weight. She was arrested. Samples were drawn. Enquiry with that woman led the raiding party to a house of one Bhagwat Khedkar. The raiding party went to his house. Some more Ganja was found from his house in the kitchen. It was weighing 13 kgs & 800 grams. Even samples of that Ganja were then drawn. Further enquiry revealed that the present Applicant was sitting in a Bolero pick-up tempo and there was some more Ganja in that tempo. Therefore, the raiding party went there. The Applicant was

also told about his rights under Section 50 of the NDPS Act. He tried to run away, but, he was apprehended. The tempo was searched. It was found to contain 8 Kg & 425 gms of Ganja. Samples were drawn. He was also arrested and FIR was lodged.

3. Heard Shri Ganesh Gupta, learned Counsel for the Applicant and Smt. A.A. Takalkar, learned APP for the State.

4. Learned Counsel for the Applicant submitted that he is falsely implicated and the investigating agency has not complied with the mandatory provisions of the NDPS Act. He submitted that the contraband which was found in the pick-up van was not Ganja. The goods do not fall within the definition of 'Ganja' mentioned in NDPS Act. He submitted that the pick-up van was not belonging to him and he was merely a driver. There was no conscious possession.

5. He submitted that in any case the quantity of the contraband was less than commercial quantity and, therefore, there is no impediment in granting him bail. He submitted

that the Applicant is in custody since 2.8.2019. The investigation is already over.

6. Learned A.P.P. opposed this application. She submitted that there is a chain of circumstances and one raid led to another. Therefore, weight of all the contraband had to be considered together. She produced C.A. report before me, copy of which is taken on record and marked 'X' for identification. The report shows that all these samples, revealed that it was Ganja. She, therefore, opposed this application.

7. I have considered all these submissions and with the assistance of both learned Counsel, I have perused the entire charge-sheet. The charge-sheet contains statements of the raiding party members as well as the panchnamas. Those documents show the procedure followed by the raiding party. The procedure is the same as described in the FIR mentioned hereinabove. Thus, the question remains as to whether bail can be granted to the present Applicant.

8. The investigation shows that the pick-up van to which the Applicant is supposedly connected with was having Ganja weighing 8 Kg & 425 gms.. Whether he was also connected with the other contraband seized from the woman and the co-accused Bhagwat will be a matter of trial.

9. At this stage, at least there is nothing to connect that contraband found from the present Applicant was in any manner connected with other two accused. Therefore, at this stage, today I am considering quantity of Ganja which was found in the pick-up van which was less than commercial quantity. Whether it was a conscious possession or not is also a matter for trial.

10. At this stage, there is some material to show that the Applicant tried to run away after the raiding party members approached him. Therefore, though at this stage there is connection of the present Applicant with the present crime the fact remains that what was recovered from the Applicant's pick-up van was less than the commercial quantity of Ganja. The Applicant is already in custody since 2.8.2019.

The investigation is over.

11. Considering this, the bar under Section 37 of the NDPS Act will not come in the way of the Applicant in getting released on bail. There is nothing on record to show that the Applicant is likely to indulge in similar offences. Learned A.P.P. has submitted a report of the investigating agency and it does not show that there are any antecedents against him. Said report is taken on record and marked 'Y' for identification.

12. Hence, the following order :

ORDER

- (i) In connection with C.R.No.135/2019 registered at Kamothe police station, Navi Mumbai, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)