

THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.666 OF 2021

Nandu Subhash Varpe,]
 R/at, Nengaon, Temvi, Ta. Sangamner, Dist.]
 Ahmednagar]
 [Presently lodged in Yervada Central Prison.]] ... Applicant

Versus

The State of Maharashtra]
 [At the instance of the P.I. Customs, Pune.] ... Respondents

...

Mr. Aniket Nikam i/b Mr. Vivek Arote for the Applicant.

Mr. Ajay Patil, A.P.P. for the State.

Mr. Jitendra Mishra for the Customs.

...

CORAM : MRS. BHARATI DANGRE, J.

RESERVED ON : 19TH JULY, 2021.

PRONOUNCED ON : 04TH AUGUST, 2021.

ORDER:-

1. Being charged in CR No.7 of 2019 registered with Customs, Pune, for allegedly having committed offences punishable under

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Sections 8(c), 20(b)(ii)(C), 25, 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (**“the NDPS Act”**) and, on being arrested, the Applicant seeks his release on bail on the ground that the only material available against him is the statement of the co-accused and his own statement recorded under Section 67 of the NDPS Act. Relying upon the latest position of law, holding that the said statement is not admissible in evidence being made to an officer, who is a police officer, learned counsel Mr. Nikam submits that there is no other material sans the said statement and, therefore, he is entitled to be released on bail. He also alleged violation of Section 50 of the NDPS Act when the contraband was seized from Accused No.1.

2. On the basis of the information received regarding trafficking of ganja, a narcotic drug, the officers of the Narcotic Cell, Customs, Pune, kept a strict vigilance near the address, where the suspect was to arrive, in the presence of two independent panchas on 03/07/2019 from 0630 hours onwards. At about 0740 hours, one white coloured vehicle (Tata Indigo) approached the place and when it was intercepted, the driver divulged his name and revealed that he was carrying four gunny jute bags and, on search of the same, it led to 50 cello taped packets, which contained green dried fruiting and flowering tops and dried leaves, purported to be ganja. On complying with the provisions of Section 50 of the NDPS Act before the independent gazetted officer, the contents of the bag

were weighed and found to be 108.80 kgs. When small quantity of the material was drawn from all the cello taped packets and subjected to testing with Drug Detection Kit, it tested positive for ganja. The necessary samples were drawn and after following the procedure, the plastic packets came to be sealed.

3. The statement of the person, who was apprehended with the contraband, was recorded under Section 67 of the NDPS Act and he admitted his crime of trafficking and possession of 108.80 kgs. of ganja.

4. In the statement of Accused No.1, he divulged that he had purchased 50 packets of ganja packed in four plastic bags from the Applicant, who was a resident of Nemgaon, Tamvi, Tal. Sangamner, Dist. Ahmednagar, who delivered the same to him at Lande Mahadev Forest, Sangola, Solapur on 30/06/2019. After the sale of ganja, Accused No.1 was to pay the Applicant an amount of Rs.5 lakhs. The accused divulged that he had delivered ganja six times in the past to the customers from Nashik, Mumbai and Jalgaon and the person to whom, he was to deliver ganja, visited village Chikmahud on 29/06/2019 and put up a proposal for purchase of ganja to which he has agreed and promised to deliver ganja on 03/07/2019.

5. Discreet enquiries were made to locate the present Applicant.

On receiving information that the present Applicant, who was a resident of Nemgaon, Temvi, Taluka Sangamner, Dist. Ahmedgar was staying in Pune is likely to arrive Shivaji Nagar S.T. Stand, Pune, the officers of the Narcotic Cell kept surveillance on 28/11/2019 and, he was identified and apprehended. His statement came to be recorded under Section 67 of the Act, where he admitted to have sold 50 packets of ganja stuffed in four jute bags weighing approx. 108 kgs. to one Arun Shivaji Bhosale of Chikmhud, Tehsil Sangola. He admitted that after finalizing the deal, he delivered the aforesaid quantity of ganja to Arun Shivaji Bhosale at Lande Mahadeo Forest, Solapur on 30/06/2019. By serving an arrest memo, the Applicant was arrested on 28/11/2019 for having contravened the provisions of Sections 8(c), 20(b) and 29(1) of the NDPS Act. On completion of investigation, the charge-sheet has been filed under the aforesaid sections.

6. The seizure of commercial quantity of ganja is effected on 03/07/2019 and the ganja was packed in 50 cello taped packets and Accused No.1 has confessed that he had carried the said ganja in four jute gunny bags in the vehicle, which was registered in the name of his wife to sell to Vikas Patil, resident of Patil Estate, Pune. The quantity seized is commercial quantity and on subjecting to test, it was revealed to be ganja. The total contraband seized is 108.80 kgs. Accused No.1 disclosed that the ganja was purchased by him from the present Applicant, who was found absconding and

ultimately arrested on 28/11/2019. The Applicant's statement is also recorded under Section 67 of the NDPS Act and he admitted to have sold the contraband to Accused No.1 for which he was to receive an amount of Rs.5 lakhs.

7. Applying the parameters contained in Section 37 of the NDPS Act to the present case, which led to recovery of 108.80 kg. of ganja from Accused No.1, who has disclosed that it is purchased from the present Applicant and confessed to the same, the legal effect of the statement of the accused person recorded under Section 67 of the NDPS Act would be determined at the time of trial. However, from the material compiled in the charge-sheet, it is apparent that the Applicant is involved in trafficking of narcotic drugs as Accused No.1 has disclosed that he had on previous occasion supplied ganja to different customers and the commercial quantity of ganja, which he was to deliver to one person, was purchased by him from the present Applicant. The quantity of the ganja involved is huge and the trap leading to the recovery of the said ganja on the basis of secret information gave rise to a reasonable belief that the Applicants is trading in contraband and on his release on bail, he is likely to repeat the offence of involving in trafficking of the prohibited substance.

8. I do not deem it fit to consider the effect of the statement of the Applicant recorded under Section 67 of the NDPS Act at this

stage particularly when he has not retracted the said statement. The latest position of law as laid down in the case of **Toofan Singh v. State of Tamil Nadu** that the statement recorded under Section 67 of the NDPS Act cannot be considered as a confessional statement, but looking to the gravity of the accusation and the material contained in the charge-sheet with the possibility expressed by the learned A.P.P. of the Applicant repeating the said offence when released on bail, the Application is rejected.

[SMT. BHARATI DANGRE, J.]