

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2196 OF 2021

GOKUL PARASHURAM SANSARE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Prashant Aher, Advocate for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 25th OCTOBER 2021
PRONOUNCED ON : 28th OCTOBER 2021**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.90 of 2021 registered with Taluka Police Station, Malegaon, Nashik, for offences punishable under Section 201 of the Indian Penal Code (IPC) and under Section 15 and 18 of the Narcotics Drugs and Psychotropic Substances Act (N.D.P.S. Act).

2 On 24th February 2021, informant P.S.I. Mohit Vitthal More along with other officers of Taluka Police Station, Malegaon, were called by Police Inspector Devidas Dumne and were informed that the Superintendent of Police, Nashik Rural, had received information that the applicant and others, all residents of Village Ganegaon, Taluka Malegaon, District Nashik, had planted opium plants in their respective fields. Accordingly, the Superintendent of Police directed the said officers to conduct a raid in the fields. Pursuant thereto, the police conducted the raid and noticed that green plants including the flowers and flowering fruiting tops were seen growing in the said fields. It is alleged by the prosecution that the applicant is the owner of Gat No.105 in which opium plants were being ploughed. When confronted, the applicant allegedly admitted that he had grown the said opium plants. Accordingly, First Information Report (FIR) came to be lodged.

3 Mr.Prashant Aher, learned counsel for the applicant, at the very outset, submits that other two accused, namely,

Nimba Chandu Shillak and Rameshwar Ambadas Sasare have already been released on bail by this Court vide order dated 13th October 2021 and, therefore, he seeks parity for the applicant.

4 I have perused the said orders passed by this Court in Bail Application Nos.2976 of 2021 and 3033 of 2021.

5 Mr.Dedhia, learned APP, has not disputed the above factual position and submitted that appropriate orders may be passed.

6 It is pertinent to note from the record and more particularly the FIR that the applicant was allegedly found present in Gat No.105. However, the 7/12 extract filed on record by the Investigating Officer is pertaining to Gat No.105/3 (page nos.60 and 61). Thus, there is no clarity whether the alleged opium was found in Gat No.105, as is claimed in the FIR, or in Gat No.105/3, the 7/12 extract of which is filed on record. Since the small quantity and commercial quantity with respect to

cultivation of opium/poppy has not been specified separately under the provisions of N.D.P.S. Act, as such, in my view, the offence in this regard are covered under Section 18(c) of the N.D.P.S. Act. It is also worth mentioning that Section 18(c) of the N.D.P.S. Act provides punishment for contravention in relation to poppy and opium with rigorous imprisonment which may extend to ten years and with fine, which may extend to one lakh rupees. Prima facie, it is not clear whether it was Gat No.105 or Gat No.105/3, as is reflected from the 7/12 extract, where opium was allegedly found, the benefit of same should be given to the applicant and the same can be decided on merits by the trial Court.

7 Investigation in the present matter is also completed leading to the filing of the charge-sheet. No antecedents of the applicant are brought on record. Needless to say, the bar of Section 37 of the N.D.P.S. Act, therefore, would not apply in the given set of facts and circumstances.

8 In view of above, I am inclined to allow the application. Hence the following order :

ORDER

- (i) Applicant – Gokul Parshuram Sansare shall be released on bail in Crime No.90 of 2021 registered with Taluka Police Station, Malegaon, Nashik, on his executing PR.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.
- (ii) The applicant shall attend the concerned Police Station on the first Saturday of every month between 10.00 a.m. to 11.00 a.m. for a period of 24 months from the date of his release.
- (iii) The applicant shall not tamper with the evidence or attempt to influence / contact the complainant, witnesses or any person concerned with the case.
- (iv) The applicant to co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

(v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(vi) The application is allowed in the aforesaid terms.

(V. G. BISHT, J.)

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