

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1583 OF 2020

Santosh Pundalik Kale .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr.Tapan Thatte i/b Mr.Shantanu Adkar for the Applicant.
Mr.S.H.Yadav, APP for the State.

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CORAM: BHARATI DANGRE, J.
DATED : 4th AUGUST, 2021

P.C:-

1. In an earlier round, the application of the present applicant was permitted to be withdrawn, with liberty to approach the Special Judge afresh for bail. In the order dated 30/09/2020 passed in Criminal Bail Application (St) No.1963 of 2020, the Court recorded that the learned Sessions Judge did not consider the legal position as has been propounded by this Court in case of **Stefan Mueller Vs. State of Maharashtra (Criminal Writ Petition No.2939/2009 decided on 23/06/2010)** to the effect under Section 37 of the NDPS Act, the offence involving a small quantity would be a bailable offence. Further, accepting the submission of the learned counsel for the applicant that where there are more than one accused involved and there is individual recovery of the contraband from each of the accused, the quantity has to be restricted to the amount of the contraband recovered from the individual

accused, the matter was remanded to the learned Special Judge for fresh consideration on merits. This resulted in the order dated 20/10/2020 passed by the Special Judge, Kolhapur, once again rejecting the application of the applicant on merit alongwith other co-accused. This is the precise ground on which the bail is sought for in the present application.

2. The applicant is charge-sheeted in C.R.No.250 of 2020 registered with Rajarampuri Police Station, Kolhapur for allegedly having committed the offence punishable under Section 20(b) of the NDPS Act.

The case of the prosecution is that on 19/06/2020, a secret information was received about the contraband being traded and accordingly a raid was effected at about 6.25 p.m., after adhering to the prescribed procedure and from accused Nos.1 and 2, 20 kilo 400 grams Ganja came to be seized in presence of the panchas. The seizure was completed under Section 50 of the NDPS Act. Thereafter, in separate seizure 4.00 kg. of Ganja was seized from accused No.3 and from possession of accused No.4, 2.00 kg. of Ganja came to be seized. From the present applicant (accused No.5), 500 grams of Ganja came to be seized. The contraband is also seized from accused Nos.6 and 7.

3. The case of the prosecution is that the conspiracy was hatched between accused Nos.1 to 7 and they were involved in purchasing and selling of Ganja. Accused Nos.1 and 2 were apprehended at the spot and came to be arrested on

19/06/2020 whereas the applicant was arrested on 24/06/2020.

Learned counsel for the applicant has invited my attention to the panchanama dated 24/06/2020 witnessing the seizure of 500 gram of Ganja from the present applicant. The panchanam record that when the search was carried out in the house of accused No.1 and on analysis of his CDR, his connection with the applicant was revealed and the applicant came to be apprehended. When he was subjected to search, 500 gram of Ganja was seized from him.

4. Undisputedly, the contraband recovered from the applicant is small quantity, being 500 gram. In view of the amount of contraband being small, rigors of Section 37 of the NDPS Act will not come into force as clause (b) of sub-section (1) of Section 37 comes into picture when the person is an accused of offence punishable under Section 19 or Section 24 or Section 27-A and also for the offences involving commercial quantity. In absence of rigors of Section 37 being attracted, investigation being complete and the charge-sheet being filed, the decision in case of **Stefan Mueller** (supra) would come into picture. The individual recovery of contraband from each of the accused will have to be taken into account and the quantity has to be restricted to the amount of the contraband recovered from the individual accused. In the present case, it is 500 gram. Learned Special Court has failed to take into consideration the observations by this Court and relied upon Section 37 of the Act and decided the application by applying the two parameters contemplated under the said Section, which is an erroneous approach.

The applicant deserves to be released on bail, subject to the following conditions.

: ORDER :

- (a) The application is allowed.
- (b) Applicant - Santosh Pundalik Kale shall be released on bail in C.R.No.250 of 2020 registered with Rajarampuri Police Station, Kolhapur on furnishing P.R. bond to the extent of Rs.20,000/- with one or two sureties of the like amount.
- (c) The applicant shall mark his attendance in the Special Court once in every two months.
- (d) The applicant shall supply his residential address and contact number to the Investigating Officer.
- (e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with the prosecution evidence.
- (f) The prosecution is at liberty to apply for cancellation of bail if the applicant indulge himself into any offence relating to narcotics.

[SMT. BHARATI DANGRE, J]