

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

CRIMINAL BAIL APPLICATION NO.2976 OF 2021

Nimba Chandu Shillak	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Ayaz Khan, for the Applicant.

Mr. H. J. Dedhia, A.P.P for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 13th OCTOBER 2021

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 90 of 2021 registered with the Malegaon Taluka Police Station, Nashik, for the alleged offences punishable under Sections 15 and 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985. (N.D.P.S. Act) and under Section 201 of the Indian Penal Code.
3. Learned Counsel for the applicant submits that the police had conducted raid on 3 fields (3 separate Gat Nos) on 24th February 2021, on receipt of some information, with respect to cultivation of opium plants in the said 3 fields. Learned Counsel for the applicant submits that the

applicant is one amongst the several land owners of Gat No.16, from which opium was allegedly seized. He submits that the applicant was admittedly not present at the spot at the time of the alleged incident. He submits that under the N.D.P.S. Act, small quantity and commercial quantity with respect to cultivating of opium/poppy has not been specified separately and as such the offences in this regard are covered under Section 18(c) of the N.D.P.S. Act. He submits that apart from the applicant, none of the co-joint owners have been prosecuted in the said case. He submits that there is nothing to show that the applicant was in exclusive possession of the said field i.e. Gat No.16 or that he had knowledge that what was cultivated in his land was opium. He submits that the applicant has no antecedents.

4. Learned APP opposes the application. He, however, does not dispute the fact that the land in question i.e. Gat No.16 stands in the name of several persons including the applicant and except the applicant none of the co-owners of the Gat No.16 has been arraigned as accused in the said C.R.

5. Perused the papers. On 24th February 2021, the complainant – PSI More alongwith other officers of Malegaon Taluka Police Station,

Nashik (Rural), were called by PI - Devidas Dumne and were informed that the Superintendent of Police, Nashik Rural, had received information that the applicant and others, all resident 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 on the said 3 fields i.e. Gat Nos. 16, 73 and 105 respectively. Pursuant thereto, the police conducted a 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.16, on which opium plants were being ploughed. The person who was ploughing the field, at the time of the raid was arrested. The opium allegedly seized was commercial quantity. As far as the applicant is concerned, it appears that the applicant was not present at the spot, at the time of the alleged incident. The applicant is one of the several owners of Gat No.16. It is pertinent to note that apart from the applicant, none of the co-owners of Gat No.16 have been arraigned as accused in the said C.R. The applicant has no antecedents. Under the N.D.P.S. Act, small quantity and commercial quantity with respect to cultivating of opium/poppy has not been specified separately and as such the offences in this regard are covered under Section 18(c) of the N.D.P.S. Act. It is pertinent to note that under Section 18(c) of the N.D.P.S. Act, the

punishment for contravention in relation to poppy and opium, is rigorous imprisonment which may extend to ten years and with fine, which may extend to one lakh rupees. *Prima facie*, it appears that the applicant was not in exclusive possession of the said field i.e. Gat No.16, as is reflected from the 7/12 extract, which is on page 47 of the application. Whether or not the applicant had knowledge or not, is a matter which will be decided by the trial Court. Investigation is complete and charge-sheet is filed. *Prima facie*, having regard to the facts, the bar of Section 37 of the N.D.P.S. Act would not apply.

6. Considering the aforesaid, the application is allowed and the applicant is 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 two local sureties in the 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 cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

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

8. 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.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.