

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3291 OF 2021

Sunil Ganu Jagtap ..Applicant
Vs.
The State of Maharashtra ..Respondent

Mr.Ejaaz N. Shaikh for the Applicant.
Mr.S.R. Agarkar, APP, for the Respondent-State.

CORAM : C.V. BHADANG, J.

DATE : 20 DECEMBER 2021

P.C.

. This is second application for bail by the applicant (Accused No.2). The previous application for bail, being Criminal Application (Stamp) No.1950 of 2020 was rejected by this Court on 12 October 2020.

2. I have heard Mr.Shaikh, the learned counsel for the Applicant and Mr.Agarkar, the learned Additional Public Prosecutor for the Respondent-State. Perused record.

3. The learned counsel for the Applicant has urged three grounds in support of the plea for bail. Firstly, it is submitted that under Section 2(iii) of the Narcotic Drugs and Psychotropic

Substances Act, 1985, “Cannabis (hemp)” i.e. ganja is defined as flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops). In the submission of the learned counsel, the presence of the flowering or fruiting tops, is the basic requirement for the substance to be branded as ganja. The learned counsel has referred to the seizure panchnamma, in order to submit that the raiding Officer has not mentioned about the substance recovered having any flowering or fruiting tops. He therefore, submitted that the substance cannot *prima facie* be branded as ganja.

Reliance is placed on the order passed by this Court in ***Shri.Sandip Ashok Raut V/s. The State of Maharashtra***, bail Application No.2522 of 2014 decided on 25 March 2015 in which this Court after noticing the absence of the description of the substance recovered and considering the definition of Ganja under Section 2(iii)(b) of the said act had directed release of the applicant on bail.

4. Secondly it is submitted that there is no conscious possession of the contraband by the applicant. The learned counsel referred to the statement of Mr.Dnyaneshwar Narwade, who is owner of the Ertiga car on which the applicant was sent as a *badli* driver. It is submitted that the applicant was not aware of the vehicle having any contraband and no conscious possession can be inferred.

5. Lastly, it is submitted that Section 54 of the Act may not apply as the said presumption can only be raised at the trial and not at the stage of the consideration of the application for bail.

6. The learned Additional Public Prosecutor has pointed out that this Court had by a detailed order has rejected the previous application and there is no material change in the circumstances or grounds to entitle the applicant to be released on bail for the offence involving the commercial quantity of the contraband.

7. The learned Additional Public Prosecutor pointed out the seizure panchnamma in order to submit that the Raiding Officer had called a Chemical Analyst on the spot who had verified the substance to be ganja which is subsequently supported by the Chemical Analysis Report. It is submitted that the constructive/conscious possession has to be attributed to the applicant when he was engaged as a driver on the Ertiga car belonging to Mr.Dnyaneshwar Narwade. He therefore, submitted that no case for grant of bail is made out.

8. I have carefully considered the rival circumstances and the submissions made. *Prima facie* it appears that the CA report describes the samples as being flowering or fruiting tops which would answer the definition of 'ganja', under Section 2(iii) of the

said Act. At least *prima facie* at this stage it can be seen that a Assistant Chemical Analyst was called on the spot and on the basis of a spot kit for analysis the Analyst had *prima facie* opined the substance to be ganja.

9. This in my view would clearly distinguish the present application from the application of *Shri.Sandip Ashok Raut* on which reliance is placed.

10. The contention on behalf of the applicant that there is no conscious possession in my considered view will have to be gone into at the stage of trial. These grounds were taken and have been adverted and dealt with in the previous application which was rejected. Insofar as Section 54 of the Act is concerned it is true that the said presumption arises at the trial. However, it is one of the circumstances which has to be considered as a presumption in favour of the prosecution which was considered while refusing to grant bail. The offence involves commercial quantity of the contraband ganja.

11. Considering the overall circumstances, I do not find that there is any material change in circumstances or grounds to release the applicant on bail. The application is accordingly rejected.

12. At this stage, the learned counsel for the Applicant on instructions states that the trial has not proceeded and the applicant and the other co-accused are not being produced before the learned Special Judge. He also made a request for expediting the trial.

13. The learned Special Judge shall look into the matter and shall ensure that the applicant and the co-accused are produced before the Special Court. The learned Special Judge shall hold the Trial as expeditiously as possible and shall ensure that the trial commences within a period of three months from today and is concluded expeditiously.

14. Needless to mention that the observations herein are of a *prima facie* nature, for limited purpose of deciding the application for bail. The learned Special Judge shall not be influenced by the same, at the trial.

C.V. BHADANG, J.