

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

BAIL APPLICATION NO. 2299 OF 2019

Hari Mahadu Valse	 Applicant
v/s.	
The State of Maharashtra	 Respondent

Mr. Ganesh Gupta for the Applicant.
Mr. S.V. Gavand, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 29th JULY, 2021.

P. C. :-

. By this Application, the Applicant seeks enlargement on bail in C.R.No.210/2017 registered with Manchar Police Station, Pune for offences punishable under Sections 8(C) and 20(C) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2. Mr. Ganesh Gupta, learned counsel for the Applicant contends that there is no compliance of Section 42 and 50 of the NDPS Act. He further submits that there is delay in forwarding the seized material for chemical analysis. He contends that flowering tops allegedly seized from the warehouse of the Applicant have not been separately weighed. He has relied upon the order dated 23/06/2021 passed by this Court (Coram : Revati Mohite Dere, J.) in Criminal Bail Application

No.2583 of 2019 to contend that the accused in similar fact situation had been released on bail.

3. It is the case of the prosecution that the patrolling police had received confidential information that the Applicant and his associate had stored ganja in his warehouse for the purpose of sale. In consequence of this information, raid was conducted on 01/08/2017 in presence of panchas. The Panchanama *prima facie* reveals that the co-accused escaped from the pomegranate field. The Applicant disclosed his name and he was appraised of his right under Section 50 of the NDPS Act. It is stated that the Applicant gave his consent to be searched. Accordingly, search was conducted and some green leaves, flower tops and seeds which were stored in two gunny bags were seized in presence of panchas after following the necessary procedure. The Applicant was arrested at the spot and pursuant to the report lodged by API Nilakhant Rajaram Jagtap of LCB Pune, Rural, C.R.No.210/2017 came to registered against him at Manchar Police Station, Pune for offences under Sections 8(C) and 20(C) of NDPS Act. Upon completion of investigation, charge sheet was filed and the same has been registered as Special (NDPS) Case No.3/2017 and is pending before the learned Judge, Khed at Rajgurunagar.

4. The Panchanama *prima facie* reveals that the seized material contained green leaves, flower bud and seeds were weighing approximately 71 kg 190 gms. The said seized material was forwarded for chemical analysis 10 days after the seizure. The delay *per se* is immaterial as *prima facie* there is nothing to show that the seal of the parcel, received by chemical analyzer was tampered with.

5. It is however to be noted that the chemical analysis report reveals that the material forwarded for analysis contained flower buds with pieces of stalks, stems, leaves and seeds, without quantifying the weight of flower tops. This fact *prima facie* raises a doubt whether ganja seized from the warehouse of the accused was of commercial quantity as to attract the provisions under Section 20(C) of the NDPS Act.

6. The Applicant is in custody since 05/08/2017. The trial has not yet commenced. Considering the present situation arising from Covid-19 pandemic, the trial is not likely to commence and conclude in immediate future. The Applicant has no criminal antecedents.

7. Considering the above facts and circumstances, the Bail Application is allowed on the following terms and conditions :

(a) The Applicant is ordered to be released on bail on furnishing bail bonds of Rs.40,000/- (Rupees Forty Thousand) with one or two sureties in the like amount to the satisfaction of the Trial Court ;

(b) The Applicant shall attend the Manchar Police Station, Pune once in two months on the first Saturday between 10:00 a.m. to 11:00 a.m., for a period of 12 months from the date of his release ;

(c) The Applicant to co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

(d) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case ;

(e) The Applicant shall keep the Trial Court informed of his current address and mobile contact numbers and/or change of residence or mobile details, if any, from time to time ;

8 . The Bail Application stands disposed of in above terms.

**PREETI
H JAYANI**

Digitally signed by
PREETI H JAYANI
Date: 2021.08.02
14:35:57 +0530

(SMT. ANUJA PRABHUDESSAI, J.)