

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (BA) NO.286 OF 2021

(Kailash Bajirao Pawar Vs. State of Maharashtra thr. PSO PS Akot (Rural), Tq. Akot,
Dist. Akola)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. A.B. Mirza, Advocate for Applicant.
Mr. N.S. Rao, APP for Non-Applciant/State.

CORAM: ROHIT B. DEO, J.

DATE: 17th JULY, 2021.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. The applicant is facing prosecution under Section 8(A), (3), 20(B)(G) of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act) vide Crime 383/2020 registered with Police Station Akot (Rural), Tq. Akot, Dist. Akola.

3. The raid was conducted pursuant to secret information received that the applicant had stored cannabis (*ganja*) for sell in hut belonging to Raju Solanke.

4. After completion of necessary formalities, the hut was raided and 39 Kg. cannabis was seized, which was stored in 18 packets. The applicant was arrested from the

spot. According to the prosecution, on the basis of information disclosed by the applicant the premises of co-accused Shatrughna was then raided and 107 Kg. cannabis was recovered.

5. Section 37 of the NDPS Act imposes stringent conditions, which are in addition to the conditions envisaged under Section 439 of the Criminal Procedure Code. It would be impermissible to grant bail unless the court records a satisfaction that there are reasonable grounds to believe that the accused is not guilty and further that the accused shall not commit similar offence while on bail. The conditions are cumulative and not in the alternative.

6. While several submissions are made by Mr. A.B. Mirza in support of the bail application, including a submission founded on the alleged non-compliance of mandatory provisions of Section 50 of the NDPS Act, the submissions required resolution of factual aspect, and it would not be appropriate to deal with them while considering the bail application.

7. The alleged non-compliance of Section 50 of the NDPS Act also involves resolution of factual aspect, which is best left to the trial court, after the evidence is adduced. The Hon'ble Supreme Court has articulated that such issues need not be considered at the stage of bail. Reference may

be made to the following observations of the Supreme Court in *Supdt., Narcotics Control Bureau, Chennai v. R. Paulsamy*, (2000) 9 SCC 549.

“6. In the light of Section 37 of the Act no accused can be released on bail when the application is opposed by the Public Prosecutor unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offences and that he is not likely to commit any offence while on bail. It is unfortunate that matters which could be established only in offence regarding compliance with Section 52 and 57 have been pre-judged by the learned single Judge at the stage of consideration for bail. The minimum which learned single Judge should have taken into account was the factual presumption in law position that official acts have been regularly performed. Such presumption can be rebutted only during evidence and not merely saying that no document has been produced before the learned Single Judge during bail stage regarding the compliance of the formalities mentioned in those two sections.”

8. At this stage, there is sufficient material on record to link the applicant with the crime who is allegedly caught red-handed in the hut in which cannabis of commercial quantity was stored.

9. The application is dismissed.

JUDGE