

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

CRIMINAL APPLICATION (BA) NO. 470/2021

Shaikh Wasim S/o Shaikh Karim Vs. State of Maharashtra

AND

CRIMINAL APPLICATION (BA) NO. 414/2021

Krushna S/o Ramdas Gond & anr. Vs. State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri M. V. Rai, Advocate for applicant (BA No. 470/2021)
Shri A. J. Thakkar, Advocate for the applicants (BA No.
414/2021)
Shri S. A. Ashirgade, APP for State.

CORAM : VINAY JOSHI, J.

DATE : 24.06. 2021.

Hearing was conducted through Video
Conferencing.

2. Both bail applications are arising out of Crime No. 512/2020 registered by Chandur Bazar Police Station, Dist. Amravati for the offence punishable under Sections 8(c), 20(b)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act") alongwith some offences under Motor Vehicles Act. It is the prosecution case that on receipt of secret information about transportation

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of Ganja, the Police arranged raid by obtaining prior permission of the Superior Officers. After reaching to the spot, the Police found that two motorcycles were proceeding towards them to which they accosted. On one motorcycle bearing registration No. MH-27-R-5419, three persons were traveling including applicant Deepak S/o Arjun Nemade (Bail Application No. 414/2021), whilst by another motorcycle bearing registration No. MH-27-Y-7158 applicant Shaikh Wasim S/o Shaikh Karim (Bail Application No. 470/201 and applicant Krushna S/o Ramdas Gond (Bail Application No. 414/2021) were traveling. On suspicion, they were detained. The reading party has introduced themselves and informed the intention of raid. The accused were made aware about their right to get searched in presence of Gazetted Officer to which they denied. The Police took their personal search and of their belongings. During search of three persons riding on first motorcycle, they found that one of them namely Suraj was carrying silver coloured sack containing Ganja. The Police weighed contents and found that it was Ganja weighing 18.260 kg. Then search was taken of the persons riding on the

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another motorcycle, on it they found that applicant Krushna was also holding ash coloured sack containing Ganja weighing 14.385 kg. Accordingly, the Police have seized total Ganja weighing 46.945 kg. The Police took samples, recorded statements and completed the other formalities.

3. It is the case of prosecution that both motorcycles were traveling together, and on single information raid was conducted in which contraband i.e. Ganja weighing 45.640 kg. was came to be seized which was of commercial quantity.

4. Learned counsel for the applicants have initially disputed that the seized Ganja was of commercial quantity. It is specific contention that there was no nexus in between the persons traveling by two separate motorcycles. From first motorcycle Ganja weighing 18.260 kg. and from second motorcycle Ganja weighing 14.385 kg. was separately seized which is below than the commercial quantity. According to learned counsel for the applicants, the seizure has to be separately calculated since the Police have not invoked the charge of conspiracy. It is

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submitted that the Police paper nowhere discloses that the raiding party has complied the provisions of Section 50 of the NDPS Act. It is the submission that the statements are silent on the point that the Police have informed the accused about their right to be searched in presence of Gazetted Officer. It is the next submission that there is also total non-compliance of the provisions of Section 57 of the NDPS Act since after arrest and seizure, detailed report was not forwarded to the Superior Officer.

5. As regards to the first contention that both seizures are to be separately considered. Learned APP has his own reservation to accept the submission. According to him, the information was common as well as both vehicles were simultaneously traveling and found at the same place. Therefore, according to him, both seizures cannot be bifurcated and required to be calculated jointly which would turn to be of commercial quantity. Learned counsel for the applicant would submit that beside mere common information, there is no material to indicate that both set of accused were acting in connivance with or a members of conspiracy. To support said contention,

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reliance has been placed on the bail order passed by this Court in Bail Application 995/2019 in case of Vivekanand Vikas Bodare Vs. The State of Maharashtra, decided on 27.01.2020. In the said case, under same information two cars were seized at one place from which different quantity of Ganja was seized. The facts were quite similar since individual quantity seized from each car was less than commercial quantity. This Court by placing reliance on the decision of the Supreme Court and earlier decisions of this Court, has expressed that in absence of any material, it is difficult to calculate both contraband together to term it as seizure of commercial quantity. It is not possible to take different view since the Police have neither invoked the charge of conspiracy nor any material is produced on that behalf. In view of that, rigor of Section 37 of the NDPS Act would not apply.

6. So far as the compliance of Section 50 of the NDPS Act is concerned, it is the submission that in absence thereof, the accused are entitled for benefit. To substantiate said contention, reliance is placed on the decision in case of *State of Rajasthan Vs.*

Parmanand and another, 2014(3) SCALE, wherein it is ruled that besides a search of bag carried by accused, if there was also personal search then the provision of Section 50 of the NDPS Act would apply. By placing reliance on the decision of the *Suresh and others Vs. State of Madhya Pradesh, (2013) 1 SCC 550*, it has been canvassed that compliance under Section 50(1) of the NDPS Act is mandatory. Prima facie, there is no material to show the compliance of the provisions of Section 50 of the NDPS Act.

7. On the point of compliance of Section 57 of the NDPS Act, it has been submitted by learned APP that report dated 18.12.2020 i.e. First Information Report itself is a compliance of Section 57 of the NDPS Act since it was made to the Police Inspector. It is a matter to be adjudicated whether filing of First Information Report amounts to due compliance of Section 57 of the NDPS Act or not, however, submission in this regard requires consideration.

8. The limit prescribed under schedule for seized the drug viz Ganja is of 20 kg. to constitute as

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commercial quantity. Both seizures if considered separately, they are less than commercial quantity. Certain mandatory compliances is also a matter for consideration. No criminal antecedents against the applicants were brought to the notice. Investigation is complete and charge-sheet has been filed. The trial will take considerable time for its disposal. Having regard to all above circumstances, the applicants can be released on bail by imposing certain conditions, hence following order:-

(I) Both applications are allowed.

(I) The applicants namely Shaikh Wasim S/o Shaikh Karim, Krushna S/o Ramdas Gond and Deepak S/o Arjun Nemade are released on bail on their furnishing P.R. Bond of Rs. 25,000/- each with one or two sureties in the like amount.

(II) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

(III) The applicants shall attend concerned Police Station on first Monday of each month in between 10.00 am to 12.00 noon till conclusion of trial.

JUDGE

Gohane.