

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

CRIMINAL APPLICATION (BA) NO. 494/2021

Sheikh Israil Sheikh Rafique

-VERSUS-

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. N. Ali, Advocate for applicant.
Shri H. D. Dubey, APP for State.

CORAM : VINAY JOSHI, J.

DATE : 22.06. 2021.

Hearing was conducted through Video
Conferencing.

2. The applicant was arrested in Crime No. 69/2021 by the Police, Police Station Awadhutwadi, Yavatmal for the offence punishable under Sections 8(c), 20(b), 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The bail is claimed on twofold grounds, firstly that the applicant is entitled for default bail in terms of Section 162(2) of the Code of Criminal Procedure and secondly on merit by stating that there is no adequate material to detain the applicant behind

2

the bar. The State resisted bail by filing reply affidavit. As regard to applicants claim of bail in default, no contention has been made in resistance. It is stated that the applicant was found along with contraband namely Ganja weighing 3 kg 910 gm and offence being of serious nature, he is not entitled for bail.

3. It is the prosecution case that, acting on secret information, the applicant was arrested while proceeding by two wheeler. On such, Ganja of intermediate quantity weighing 3 kg 910 gm worth Rs. 24,000/- was seized from his possession. Learned counsel for the applicant would submit that the applicant was arrested on 31.01.2021 and produced before the Magistrate on 01.02.2021. On completion of investigation, charge-sheet has been filed on 24.03.2021 i.e. within 60 days, however, Chemical Analyzer's (C.A.) report was filed thereafter, on 08.04.2021. It is the submission that charge-sheet without C.A. report is

3

not a charge-sheet in terms of Section 173(2) and (5) of the Code of Criminal Procedure and therefore, he is entitled for bail in default. In support of said contention, reliance has been placed on the decision of the Court in case of *Sunil Vasntrao Phulbande and another Vs. State of Maharashtra, 2003(Supp.) Bom C.R. 101*. So far as the factual aspect is concerned, the State has no dispute about the dates and the position that C.A. report is filed after 60 days. Learned Trial Court dealt this issue, however decided the application under assumption that the seized contraband were of commercial quantity, meaning thereby the period for filing charge-sheet was of 90 days. The applicant was arrested for the offence punishable under Sections 8(c), 20(b), 22 of the Narcotic Drugs and Psychotropic Substances Act, for which the maximum punishment may attract to the extent to 10 years of imprisonment. Therefore, the period for filing charge-sheet would be of 60 days. Hence, the submission advanced by the applicant

4

in this regard carries substance.

4. The applicant was arrested for possessing Ganja worth weighing 3 kg 910 gm which is less than commercial quantity. It is submitted that the Police have not completed the technical formalities regarding search and seizer. There are no criminal antecedents against the applicant. Having regard to the quantity seized from the applicant and as investigation is complete, he can be released on bail. Hence, following order:-

(I) The applicant is released on bail on his furnishing P.R. Bond of Rs. 50,000/- with one or two sureties in the like amount.

(II) The applicant 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.

JUDGE

Gohane.