

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

CRIMINAL APPLICATION (BA) NO.849 OF 2021

(Sheik Junaid Sheik Mukhtar Vs. The State of Maharashtra thr. PSO PS Ural, Tq.
Balapur, 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. S. V. Sirpurkar, Advocate for Applicant.
Mr. K. R. Deshpande, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 8th SEPTEMBER, 2021.

The applicant is seeking bail in connection with Crime 55/2021 registered with Police Station Ural, Tq. Balapur, Dist. Akola for offences punishable under sections 20 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), 65 (e) of the Maharashtra Prohibition Act and section 4 read with section 25 of the Arms Act.

2. The case of the prosecution is that the police received secret information at 02:00 p.m. on 23.02.2021, while on patrolling duty, that the applicant is selling *ganja* (cannabis) from his residential house. The information was communicated to the Superintendent of Police, Akola who directed that raid be conducted. Accompanied by two *panchas*, a measurer with weighing machine and some staff, the residential house of the applicant was raided. The police reached the residential house of the applicant, situated in Qureshipura at 03:05 p.m. The door of the house was open

and a person wearing black trouser and greenish T-shirt was present. The police summoned said person near the door, disclosed the identity of the raiding squad, asked the person his name and learnt that he was Sheik Junaid Sheik Mukhtar. The raiding squad followed the necessary formalities, the applicant conveyed his no objection to search of the house. It was during the search that *ganja* weighing 4 kg. 399 gram was recovered stash in plastic bag, from the kitchen. Additionally, contraband liquor and several sharp edged weapons were recovered.

3. The learned counsel Mr. Sirpurkar would submit that stringent provisions of section 37 of the NDPS Act are not applicable since the quantity is not commercial quantity, and if tested only on the touchstone of section 439 of the Criminal Procedure Code, 1973 (Code), the applicant is entitled to bail.

4. Mr. Sirpurkar would submit that there is no material on record to show that the applicant was in exclusive possession of the house. Adverting to the order of rejection by the learned Special Judge, Mr. Sirpurkar would submit that most of the offences registered against the applicant have resulted in acquittal and in any case bail cannot be denied on the ground that the antecedents are adverse. From the material available in the charge-sheet, *prima facie*, it appears that the accused was the only occupant of the house when the raid was conducted. Ultimately, it would be for the trial court to record an appropriate finding on the basis of evidence. At this stage,

I am not inclined to accept the submission that the applicant was not in exclusive possession of the house. Mr. Sirpurkar points out that in the Gram Panchayat record the house is registered in the name of the father of the applicant. Assuming that such is a case, no inference can be drawn that the applicant is not an exclusive possession of the house.

5. It is true that the stringent provisions of section 37 may not apply. However, even *de hors* the stringent conditions, and considering the case of the applicant on the touchstone of section 439 of the Code, there is no case made out for grant of bail.

6. The accused is a known history-sheeter. He has faced/is facing as many as nine prosecutions. Some are for causing bodily harm and one is under section 302 of the Indian Penal Code. Even if it is assumed that the applicant is acquitted in some prosecution, the prosecution under section 302 of IPC is a live prosecution and the applicant was released on bail hardly one and half month prior to the raid. The propensity to indulge in crime is crystal clear.

7. The application is dismissed.

8. The learned trial Judge is requested to expedite the trial.

JUDGE