

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

CRIMINAL APPLICATION (BA) NO. 899 OF 2021

(Shatrughna s/o Bhaulal Chauhan ..vs.. State of Maharashtra, through PSO, PS Akot (Gramin))

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, Counsel for the applicant,
Mr. N.R. Rode, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATED : 07-10-2021

The applicant is arraigned as accused in Crime 383/2020 registered with Akot (Gramin) Police Station, District-Akola, for offences punishable under Sections 8(a)(3)[8(c)] and 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

2. The gist of the prosecution case is that pursuant to secret information the police raided the hut of Panchal Raju Solanke and seized cannabis (ganja) weighing 39 kg. Panchal Raju Solanke disclosed that the owner of the contraband is Kailas Bajirao Pawar, resident of Wari Hanuman, Tahsil-Telhara, District-Akola. Pursuant to the disclosure, Kailas Bajirao Pawar was interrogated and he disclosed the name of the applicant, as his accomplice in sale of cannabis. The police squad then went to Borwha, Tahsil-Telhara, District-Akola to raid the residential house of the applicant. The prosecution case is that there was a female present in the house who disclosed her name as Anita and who claimed to be the wife of the

applicant. The search of the residential house allegedly led to seizure of cannabis weighing 107 kg.

3. The quantity seized is commercial and, therefore, the entitlement to bail will have to be scrutinized on the anvil of the twin test incorporated in Section 37 of the NDPS Act.

4. According to the learned Counsel Mr. S.V. Sirpurkar for the applicant, there is absolutely no material on record to show that the woman who was allegedly present, is the wife of the applicant or that the applicant has any nexus with the premises which were raided. Mr. S.V. Sirpurkar would submit, that there is no other incriminatory material in the entire charge-sheet as would make out a *prima facie* case of involvement of the applicant in the alleged offence.

5. The learned Additional Public Prosecutor Mr. N.R. Rode points out one tax receipt. The tax receipt pertains to House 204 at village Bhili. It is axiomatic that the tax receipt is not an incriminating material in the sense that the tax receipt, *prima facie*, does not have any nexus with the house situated in village Borwha and from which the contraband was allegedly seized.

6. In so far as the prosecution version that there was a woman in the house raided who claimed to be the wife of the applicant, the version is in the realm of

imagination. The statement of the woman who was allegedly present, was not recorded. There is absolutely no material in the charge-sheet to show that some woman named Anita Shatrughna Chauhan is in existence. The applicant claims that he is happily married to Mrs. Deokabai.

7. Considering the state of the material on record, I am satisfied that reasonable grounds exist to believe that the applicant may not ultimately be convicted. The charge-sheet does not reveal that there is any earlier offence registered against the applicant under the NDPS Act. In this view of the matter, the twin test stands satisfied and the applicant is entitled to bail.

8. The application is allowed.

9. The applicant shall be released on bail on executing personal bond of Rs.25,000/- (Rupees Twenty Five Thousand) with a solvent surety of like amount.

10. The applicant shall not make any attempt to tamper with the evidence or to influence witnesses, directly or indirectly.

11. The applicant shall attend each date of hearing scrupulously.

12. The applicant shall not leave the country without the permission of the trial Court.

JUDGE

adgokar