

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

921 BAIL APPLICATION NO.25 OF 2022

**SHAIKH RAFIK SHAIKH KADIR
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr. Bhosle Abhaysinh K.
APP for Respondents/State : Mr. S.B. Narwade
...

**CORAM : M.G. SEWLIKAR, J.
DATE : 27th January, 2022**

PC.:-

Heard.

2. The informant received a secret information that applicant had kept ganja in his shop for sale. Accordingly, the shop of the applicant was raided and ganja to the extent of 434 grams was found. It was seized. Sample was drawn. It was sent for chemical analysis.

3. Learned counsel Shri Bhosle submits that under the NDPS Act, three conditions needs to be satisfied for releasing the accused on bail that there is no possibility of conviction on the basis of evidence collected by the prosecution and that the applicant is not likely to commit similar offence again. He submits that one more condition is that the quantity seized from

the accused should be of commercial quantity. If these three conditions are satisfied accused will be entitled to be released on bail. He submits that ganja seized was 434 grams which is lesser than commercial quantity i.e. small quantity. Admittedly, ganja seized is of small quantity. Learned counsel Shri Bhosle placed reliance on the case of **Rhea Chakraborty V/s. Union of India and Anr.; 2020 (40 Bom. C.R. (Cri.) 30**. In para 70 it has been held as under:

“70. The main Section which could be attracted in her case is violation of section 8(c) of the NDPS Act, which is made punishable under section 20 or section 22. In that case, it is necessary for the investigating agency to show that her activities or contravention involved commercial quantity of a Narcotic drug or psychotropic substance. The investigation did not reveal any recovery either from the applicant or from the house of Sushant Singh Rajput. It is their own case that the drugs were already consumed and hence there was no recovery. In that case, there is nothing at this stage to show that the Applicant had committed any offence involving commercial quantity of contraband. The material at the highest shows that she has committed an offence involving contraband, but, the crucial element of incurring rigours of section 37 in respect of commercial quantity is missing. Therefore, I am satisfied that there are reasonable grounds for believing that the applicant is not guilty of any offence punishable under sections 19, 24 or 27A or any other offence involving commercial quantity. There are no other criminal antecedents against her. She is not part of the chain of drug dealers. She has not forwarded the drugs allegedly procured by her to somebody else to earn monetary or other benefits. Since she has no criminal antecedents, there are reasonable grounds for

believing that she is not likely to commit any offence while on bail.”

4. In the case at hand quantity seized is not a commercial quantity. It is a small quantity.

5. Learned APP Shri Narwade submits that charge-sheet is likely to be filed within two weeks. Therefore, applicant may not be released on bail.

6. Offence under Section 8(c) is punishable with imprisonment for one year. Already the applicant is behind the bars for one and half month. Since it is a small quantity the provisions of Section 37 of the NDPS Act will not come into play. I am, therefore, inclined to release the applicant on bail. Hence the following order is passed:

ORDER

- I) Application is allowed.
- II) Applicant be released on PR bond of Rs.30,000/- with one solvent surety in the like amount, in connection with Crime No.1150 of 2021 under Section 20 (b) (i) of the NDPS Act with MIDC Waluj Police Station, District Aurangabad on condition that he shall not interfere in the investigation and shall not presurprise the witnesses and shall attend the concerned police station on every Sunday between 12 noon and 4.00 pm till the filing of the charge-sheet.

- III) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]