

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

BAIL APPLICATION NO. 722 OF 2022

Bhavsing Asaram Marag
Age: 56 years, Occu.: Agri.,
R/o Nalniwadi, Tq. Bhokardan
Dist. Jalna

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

**WITH
BAIL APPLICATION NO. 723 OF 2022**

Darasing Nihalsing Singhal
Age: 28 years, Occu.: Agri.,
R/o Nalniwadi, Tq. Bhokardan
Dist. Jalna

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

**WITH
BAIL APPLICATION NO. 724 OF 2022**

Badamsing Nihalsing Singhal
Age: 37 years, Occu.: Agri.,
R/o Nalniwadi, Tq. Bhokardan
Dist. Jalna

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

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Mr. S.J. Salunke, Advocate for applicants
Mr. V.S. Badakh, A.P.P. for respondent - State
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**CORAM : R.G. AVACHAT, J.
DATE : 14th JULY, 2022**

PER COURT :

1. These three bail applications are being decided by this common order since they are interconnected, although the said applications pertain to three different crimes and registered separately against the respective applicants. For the sake of convenience, the First Information Report ('F.I.R.') in Bail Application No. 722 of 2022 is being referred to.

2. These are the applications for bail under Section 439 of Code of Criminal Procedure. The applicants have been arrested in connection with Crime Nos. 472 of 2021, 473 of 2021 and 474 of 2021 respectively, registered with Bhokardan Police Station, Dist. Jalna for the offences punishable under Section 201 of the Indian Penal Code and under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('N.D.P.S. Act').

3. Bail Application No. 722 of 2022

The F.I.R. has been lodged by one Yuvraj Padale, Police Sub-Inspector, Bhokardan Police Station. It is his case that the Sub-Divisional Police Officer (S.D.P.O.) had called him and police personnel to his chamber on 04th December, 2021 on 05.15 p.m. to share the information that person by name Bhavsing Marag has cultivated and stored *ganja* in his field, Gut No. 114 at village Nalani. It was, therefore, decided to effect a raid. Services of Nayab Tahasildar were availed. Two clerks working with the office of Block

Development Officer were called to act as panch witnesses. The police personnel accompanied by Nayab Tahasildar and panchas went to the land Gut No.114 at Nalani. It was 06.30 p.m. One handicapped person was present in the field. He was applicant – Bhavsing Marag. The applicant admitted to be the owner of land Gut No.114. The applicant was offered to take search of all the members of the raiding party. He declined. During investigation/search of the field, eight gunny bags containing *ganja* leaves were found. Worth there of was Rs.6,73,000/-. From each of the bag, 100 gm. *ganja* was separated as sample for being analysed in forensic laboratory.

4. Bail Application No. 723 of 2022

While search in the land Gut No.114 was on, Mr. Jogdand, Police Sub-Inspector received a secret information that in the adjacent land, Gut No.112, *ganja* has been stored. The members of the raiding party, therefore, went to that land. Applicant – Darasing was present on the land. In the maize crop standing in the field, *ganja* was found in two bundles stacked in *saree*. It was *ganja* worth Rs.2,81,700/-. Similarly, 100 gms. *ganja* from each stack was separated for being analysed in forensic laboratory.

5. Bail Application No. 724 of 2022

While aforesaid process was on, it was found that in the nearby field, one person was engaged in destroying *ganja* by setting it on fire. The

raiding party, therefore, moved towards him. The person present there was applicant – Badamsing. He told the raiding party that on having seen *ganja* being seized from the land of his brother – Darasing, he was attempting to destroy the ganja stored in his field. Some fresh *ganja* leaves and *ganja* plants were found stacked in seven gunny bags. Similarly, 100 gms. *ganja* from each stack was collected for being analysed in C.S.F laboratory.

6. Investigation of all the three crimes was made. The applicants came to be proceeded against by filing separate charge-sheet against them.

7. Learned counsel for the applicants would submit that in the case of Crime No. 472 of 2021, there is no compliance of Sections 42(2) and 57 of the N.D.P.S. Act. He took me through relevant material in that regard. He would further submit that in two other cases, it was a chance recovery. None of the applicant was found in the actual possession of the contraband article. The lands bearing Gut Nos. 112 and 114 belong to very many persons. He relied on 7/12 extract thereof. According to learned counsel, it is not a case of conscious possession. He would further submit that there is breach of Section 57 of the N.D.P.S. Act, since arrest of the applicants has not been reported to the concerned higher-ups. He, therefore, urged for grant of applications.

8. Learned A.P.P. would, on the other hand, submit that huge quantity of *ganja* was found. The applicants had cultivated the same in their respective fields. It is, therefore, for the applicants to show that they were not in the conscious possession of the contraband. The same can only be done during trial. He, therefore, urged for rejection of the application.

9. Considered the submissions advanced. As regards non-compliance of Section 42(2) is concerned, it is to be stated that police papers indicate the information to have been given in writing. The same also shows to have been reported to S.D.P.O. As such, it is not a case of non-compliance of the provisions of Section 42(2) of the N.D.P.S. Act. In case of irregularity in compliance of mandatory provisions of the Act, the concerned officer has to be given an opportunity to explain in that regard. The same can only be done during trial.

10. The prosecution case, as it appears from the charge-sheet, is that *ganja* was found stored in the gunny bags in the agricultural fields, Gut Nos. 112 and 114. All the three applicants were present in their respective fields. Whatever they have stated to the police officials, regarding existence of *ganja* there, would be in the nature of confession made to the police officials. Same is inadmissible in evidence. As such, as per the prosecution case, there is huge quantity of *ganja* found in number of bags placed in two agricultural

fields. True, the applicants are owners of those lands, the record further indicates that they are not the only owners. 7/12 extracts of both the lands have been placed on record to indicate these lands belong to number of persons. As such, there are number of co-owners. None of the applicant was found in actual possession of the contraband. So far as regards applicant – Badamsing (in Bail Application No. 724 of 2022) is concerned, whatever he disclosed to police officials that he was about to set the *ganja* in his field on fire with a view to destroy the evidence of its existence, is already stated to be inadmissible in evidence.

11. The applicants have no criminal antecedents. It will take time for commencement of trial and conclusion thereof. In the fitness of things, the applications deserve to be allowed. Hence, I pass the following order :-

ORDER

(I) All the three bail applications are allowed.

(II) Applicant - Bhavsing Asaram Marag be released, in connection with Crime No. 472 of 2021 registered with Bhokardan Police Station, Dist. Jalna for the offences punishable under Section 201 of the Indian Penal Code and under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985, on executing PR. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(III) Applicant - Darasing Nihalsing Singhal be released, in connection with Crime No. 473 of 2021 registered with Bhokardan Police Station, Dist. Jalna for the offences punishable under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985, on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(IV) Applicant - Badamsing Nihalsing Singhal be released, in connection with Crime No. 474 of 2021 registered with Bhokardan Police Station, Dist. Jalna for the offences punishable under Section 201 of the Indian Penal Code under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985, on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(V) The applicants shall not tamper with the prosecution evidence.

(R.G. AVACHAT, J.)

SSD