

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

BAIL APPLICATION NO.1629 OF 2022

Raju Ambadas Shinde ...Applicant

Versus

The State Of Maharashtra ...Respondent

**WITH
BAIL APPLICATION NO.1399 OF 2022**

Pintu Ambadas Shinde ...Applicant

Versus

The State Of Maharashtra ...Respondent

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Advocate For Applicant : Mr. Shivprasad G Jadhavar

App For Respondent/State : Mr. K.S. Patil

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CORAM : S.G. MEHARE, J.

**RESERVED ON : 12th OCTOBER, 2022
PRONOUNCED ON : 19th OCTOBER, 2022.**

ORDER:-

1. Both applications are arising out of the same Crime bearing No.0084 of 2021 registered with Police Station Osmanabad Rural, District Osmanabad, for the offences punishable under Section 8(c), 20(b)(ii)(c) and 29 of the Narcotic Drugs And Psychotropic Substances, Act, 1985 ('NDPS Act' for short).

2. The applicants are brothers. They have claimed bail mainly because the investigation officer failed to comply with Sections 42(1) and (2) of the NDPS Act. The learned counsel appearing for the

applicants has vehemently argued that the applicants have been falsely implicated in the Crime. The applicants have been languishing in jail since 16.04.2021 and 21.02.2022. Before the charge sheet, the bail applications of the applicants were rejected by the Special Judge. Applicant Pintu Shinde had also moved an application for bail bearing Bail Application No.1645 of 2021 before this Court after the charge sheet. However, he withdrew the application with the liberty to file a fresh bail application if the charge was not framed within six months. Then he filed a fresh bail application. A supplementary charge sheet has been filed against applicant Raju since he absconded. On 07.09.2022, the learned Special Judge rejected his bail application

3. The learned counsel for the applicants has argued that the mandatory compliances with Sections 42 and 50 of the NDPS Act have not been complied with. The co-accused have been released on bail. Hence, the applicants are entitled to bail. They have been languishing in jail for many months, and nothing has to be recovered from them. Learned counsel appearing for the applicants has relied upon various case laws as follows :

1. *Sarija Banu Alias Janarthani Alias Janani and Another Vs. State, Through Inspector of Police, (2004) 12 SCC 266.*
2. *Smt. Najma Abdul Shaikh Vs. The State of Maharashtra in Criminal Bail Application No.1311 of 2012 decided by the Principal Seat at Bombay dated 23.10.2012.*
3. *Bipin Kumar Ramsagar Pandit @ Saxena Vs. State of Maharashtra, 2014 (1) Mh.L.J. (Cri.) 193.*

4. *Rajaram Kadu Vs. The State of Maharashtra in Bail Application No.2108 of 2016 decided by the Principal Seat at Bombay dated 13.06.2017.*
5. *Raju Bhavlal Pawar and Ors Vs. The State of Maharashtra, 2021 ALL MR (Cri) 4651.*
6. *Sau. Aruna w/o. Omprakash Shukla Vs. Omprakash s/o. Devanand Shukla, 2021 ALL MR (Cri) 4655.*
7. *Union of India Vs. K.A. Najeed, (2021) 3 SCC 713.*
8. *Angela Harish Sontakke Vs. State of Maharashtra, (2021) 3 SCC 723.*
9. *Sunil Vasantrao Phulbande and another Vs. State of Maharashtra, 2002 (3) Mh.L.J. 689.*
10. *Baba Sow Chandekar and another Vs The State of Telangana in Criminal Petition No.4428 of 2022 decided by the High Court for the State of Telangana at Hyderabad dated 05.07.2022.*
11. *Rajendra @ Dada s/o Chagan Kale and another Vs. The State of Maharashtra in Bail Application No.313 of 2022 decided by this Court dated 28.06.2022.*
12. *Shaikh Maheboob Shaikh Mahemood Vs. The State of Maharashtra in Criminal Application No.6569 of 2017 dated 22.02.2018.*

4. The Court has gone through the above case laws. The law has been laid down by the Hon'ble Supreme Court in the above case laws and followed by the High Court was that non-compliance with Sections 42 and 50 of the NDPS Act entitles the applicant to bail. However, every case has its own facts.

5. The learned APP has strongly opposed the applications. He has vehemently argued that the earlier bail application of applicant Pintu has been rejected on merit by this Court. He was granted the liberty to file a fresh application for bail if the charge is not framed within six months. However, he filed a fresh application for bail before the six months. The investigating Officer has complied with the mandatory provisions of the NDPS Act. Applicant Raju absconded for a long. The commercial quantity of Ganja was seized from the conscious possession of the applicants. The role attributed to the present applicants is different from the co-accused who have been released on bail. The Offence is serious and against the interest of the public. Hence, the applicants are not entitled to bail.

6. The objection that the compliance of Section 42(1) and (2) have not complied with the NDPS Act must have been raised before this Court while arguing the application of applicant Pintu in Bail Application No.1645 of 2021. This Court had expressed disinclination to grant the relief after hearing his learned counsel. As the liberty was sought to file a fresh bail application before the Court if the charge is not framed within six months, the liberty was granted to him. Thereafter, the applicant Pintu filed a regular bail application before the Sessions Court on 21.03.2022, claiming the bail on parity and raising the same legal grounds of non-compliance with Sections 42, 50 and 55 of the NDPS Act. Applicant Pintu filed the said

application before six months expired. Therefore, the learned Special Judge has correctly observed that the bail application on the same ground is premature. The charges were framed on 30.01.2022, i.e. before the six months from the above order. Hence, he cannot claim the bail on the same grounds on which this Court rejected it on 11.01.2022. Applicant Raju can also not claim bail on the same grounds of non-compliance with the provisions of NDPS Act, as the Court has considered the same while considering the bail application of co-accused Pintu.

7. Co-accused Swati Sanjay Shinde has been granted bail by this Court on 23.08.2021. The learned Sessions Court also granted bail to co-accused Rama Arjun Shinde considering the specific facts that the police did not produce evidence showing his active role. Based on the order of this Court passed in the case of co-accused Swati Shinde, bail has been granted to Rama Arjun Shinde.

8. Co-accused Swati has been granted bail on the ground that the prosecution did not collect the evidence to show that she was instrumental in procuring those contrabands. She had no relations with the driver of the car, applicant Raju, and the person sitting on the front seat, i.e. applicant Pintu.

9. Law of parity would be applied in granting bail to the accused where the co-accused had been granted bail on a similar set of circumstances. Law parity is the desirable rule where the case of

the accused is identical to the co-accused, who is already enlarged on bail.

10. The role attributed to the co-accused who had been granted bail has been discussed above. Examining the role attributed to the applicants, this Court is of the view that the role attributed to the present applicants is not identical with the co-accused enlarged on bail. Hence, the applicants cannot claim parity. The Offence is grave.

11. In view of the above discussion, the Court is of the view that the applicants are not entitled to bail. Besides this, the charge has been framed, and the case is likely to be concluded in the near future. Hence, both applications stand dismissed. Needless to say, the findings recorded in this order are confined to the present application only.

(S.G. MEHARE, J.)