

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

ANTICIPATORY BAIL APPLICATION NO.1583 OF 2021

Manoj Damu @ Damodhar Khairnar

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.V.D. Hon, Senior Advocate i/b. Mr. A.V. Hon Advocate for
Applicant.
Mr.A.M. Phule, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 11th JANUARY 2022

DATE OF PRONOUNCING ORDER : 31st JANUARY 2022

ORDER :

1. Present applicant is apprehending his arrest in connection with Crime No.11 of 2020 registered with Nizampur Police Station, Taluka-Sakri, District-Dhule for the offence punishable under Sections 15, 18 and 20 of the Narcotic Drugs and Psychotropic Substances Act (For short "N.D.P.S. Act").

2. Heard learned Advocate for the applicant and learned APP for the respondent – State.

3. It has been vehemently submitted by learned Senior Counsel Mr. V.D. Hon instructed by learned counsel Mr. A.V. Hon for the applicant that the applicant has been falsely implicated. He is an agriculturist and he had cultivated maize crop in his land. It is alleged that on the tip received, the raid was conducted and police found that the applicant has illegally cultivated opium crop in the middle portion of maize crop. The team had uprooted the opium crop and weight of seized opium crop is stated to be 119 Kilograms but that weight includes everything from the tip of the flower or upper portion of the tree till the end of the root. That cannot be said to be included in the definition of opium and the raiding party ought to have segregated the flowering and fruiting tops to arrive at a conclusion as to whether that quantity would be commercial quantity or small quantity. Investigation appears to be almost over and the custodial interrogation of the applicant is not required. There is no criminal history of the present applicant. Applicant is ready to abide by the terms of the bail. It was then also submitted by the learned Senior Counsel that the mandatory provisions have not been adhered to properly.

4. Per contra, learned APP strongly opposed the application and submitted that the present applicant is absconding and his whereabouts are not known though attempts were made to arrest him. The opium was illegally cultivated by the present applicant and when there is *prima facie* evidence against him, he does not deserve sympathy as well as relief under extra ordinary powers.

5. It is to be noted that the First Information Report has been lodged by A.S.I. Umesh Borse of local crime branch, Dhule. It is stated that they had received secret information about cultivation of opium within the jurisdiction of village Dusane by a person and therefore, orders were given to confirm the said secret information. Accordingly, a team was selected and directions in writing were given to them. Accordingly, along with the Panchas, photographer and police officers, the informant had gone to the spot. Weighing scale was also taken with them. It has been stated that after they went near the spot the person who was standing nearby, fled away after he saw police. The place was then identified with the help of Talathi and Police Patil. The Talathi and Police Patil informed that the said agricultural land belongs to the present applicant. The raiding party then

inspected the agricultural land and the standing crops. They had found that the opium trees were in such a situation that it should get hidden in the crop of maize. Those opium trees were uprooted. Some of them were having raw fruiting tops and others were having leaves. The trees were weighed and its weight was 119 Kilograms. Two of the trees had fruiting tops. The value of those articles was around Rs.2,38,000/-. The Panchnama was recorded and the offence was registered against the present applicant.

6. Inventory has been got done through Executive Magistrate. The land has been identified that of the present applicant i.e. Gut No.552/3. 7 X 12 extract of the same has been collected. It stands in the name of the present applicant.

7. It is to be noted that the mandatory provisions appear to have been complied with. There was no question of giving an opportunity to the person present over there for the personal search of the officers because in the First Information Report itself it is stated that after police arrived, the person who was standing there fled away. Now as regards the alleged segregation of the fruiting tops etc. is concerned, definitely it covers under Section 2 (xv) of the N.D.P.S. Act and if it is to be

considered as opium poppy as well as poppy straw which have been defined in Section 2 (xvii) and (xviii) of N.D.P.S. Act because at one place it is stated as opium in the Petition whereas in the police papers it is stated as " अफू " in Marathi and the C.A. Report gives result of the analysis as, the sample is papaver somniferum plant, which falls under the definition of Section 2 (xvii)(a) of the N.D.P.S. Act. Therefore, when even the C.A. Report states that it is a narcotic drug of which cultivation was taken and the fact that the applicant is stated to be absconding in view of the fact that even his earlier anticipatory bail application was rejected by the learned Special Judge, Dhule and then he had approached after about a year with the same prayer before the same Court. There is no change in the circumstance. The charge-sheet is yet to be filed. Not only the physical custody of the applicant is required for the purpose of investigation but also he is absconding and therefore, he does not deserve relief under extra ordinary powers.

8. The Application, therefore, stands rejected.

[SMT. VIBHA KANKANWADI , J.]