

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 355 OF 2020

Dhiraj Bhikachand Patil ...Applicant
Versus
The Io, Customs, Pune And Anr. ...Respondents

WITH

CRIMINAL BAIL APPLICATION NO. 2600 OF 2021

Ashok Bhanudas Pawar ...Applicant
Versus
The State Of Maharashtra ...Respondent

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Mr. Aniket Nikam i/b Mr. Vivek Arote, Advocate for the Applicant in both Applications.

Mr. N. B. Patil, APP for the Respondent – State.

Mr. Jitendra Mishra a/w Ashutosh Mishra, for the custom Respondent No.1.

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CORAM : PRAKASH D. NAIK, J.
DATE : 20th OCTOBER, 2022.

PER COURT:

1. The applicants are seeking Bail in respective cases in which they are arrested. Since most of the grounds urged in both the applications are common, the applications were heard together and disposed of by common order.

2. Criminal Bail Application No.355 of 2020 is preferred by Dheeraj Bhikchand Patil in connection with C.R. No. 2 of 2018 (NDPS Special Case No.1 of 2019) investigated by customs

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(Narcotic Cell), Pune.

3. Criminal Bail Application No.2600 of 2021 is preferred by Ashok Bhanudas Pawar in connection with C.R. No. 5 of 2019 investigated by customs (Narcotic Cell), Pune.

4. The brief facts of the prosecution case in C.R. No. 2 of 2018 / NDPS Sessions Case No. 1 of 2019 which is subject matter of Bail Application No. 355 of 2020 are as follows:-

i. Accused was driving vehicle No. MH-18-N-9625 which was intercepted by Inspector, Pune Customs. Search of vehicle resulted in recovery of Ganja. It was concealed in the tool bag of the vehicle (crane).

ii. The recovered Ganja was weighing 33.250 Kgs.

iii. Offences were registered under Sections 20(b)(II)(c) of NDPS Act, 1985 and Section 29(1) of the NDPS Act 1985.

iv. Raid was conducted on receipt of information from reliable source that one person namely Dheeraj Bhikchand Patil will be transporting Ganja and will pass through Rajguru Nagar Toll plaza, Tq. Khed.

v. Information was recorded in the information register and it was forwarded to superior. Panchas were called. Accused was apprehended.

vi. Notice under Section 50 of the NDPS Act was handed over to the accused, stating that the Investigation Officer intend to carryout his personal searched under NDPS Act, 1985 and he has right of being search in presence of Magistrate or Gazetted Officer.

vii. Search has resulted in the tool box containing Ganja which was recovered as stated above. Samples were obtained. Muddemal was deposited in the customs godown. Statement of accused was recorded under Section 67 of the NDPS Act. The accused was arrested on 4th July, 2018. Investigation proceeded. On completing investigation complaint was filed before the Sessions Court at Pune.

5. The applicant in Bail Application No. 355 of 2020 preferred an application for bail before Sessions Court which was rejected vide order dated 1st January, 2020.

6. The prosecution case in C.R. No. 5 of 2019 (NDPS case No. 97 of 2019) which is subject matter of Bail Application No.2600 of 2021 is as follows:-

a. Information was received from the informant on 29th May, 2019 that one Ashok Bhanudas Pawar (Applicant) will be transporting 60 kgs of Ganja in white colour Scorpio car bearing No. MH-12-EM-7377 to be delivered to one customer namely Kiran Ganpat Pankar nearby Pune at Khadki station on 30th May, 2019.

- b. The information was put up to the superior officer. Directions were issued to take necessary action.
- c. The Investigating Officer and others proceeded for raid, panchas were called.
- d. On 30th May, 2019 vehicle No. MH-12-EM-7377 was noticed coming near Khadki Railway Station from Pune city. One person got down from the vehicle. He opened the rear door of his vehicle and started transferring some plastic bags into vehicle bearing No. MH-12-NB-0466. He was surrounded by officers.
- e. Vehicle No. MH-12-NB-0466 was occupied by two persons. They gave their names as Sudhakar Kamble and Kiran Pankar.
- f. Ashok Bhanudas Pawar disclosed that he was carrying Ganja which is transported in his vehicle bearing No.MH-12-EM-7377. It was brought by him for sell to Kiran Ganpat Pankar.
- g. The Investigating Officer informed the accused that the place is Khadki Railway Station. It is a public place and not conducive to carry out further investigation and told them that further investigation would be carried out at their office located at Ice house, Sasoon road Pune. The accused were taken to Customs Headquarters.

h. The Investigation Officer explained the provisions of Section 50 of the NDPS Act and handed over typed notice under Section 50 of the Act to Ashok Pawar, Kiran Pankar and Shri Sudhakar Kamble appraising them about their right conferred under Section 50 of the NDPS Act that they have the right of search in person in the presence of Magistrate or Gazetted Officer. The accused gave written complaint permitting the Investigating Officer to carried out their personal search and the search of the vehicle. In the presence of Superintendent of Customs, Pune.

i. The Investigating Officer conducted search in the presence of Gazetted Officer. One white color plastic bag was found behind the driver seat containing 13 packets. The 13 packets containing Ganja it contents green leaves with stock, Stands, fruits and flowering tops like substance emitting a strong smell. Samples were taken. The plastic bags found in vehicle No.MH-12-MB-0466 was obtained and it was containing 12 packets. Samples were taken. The weight of the plastic bags it was 52.300 KG's. Accused were arrested on completing investigation. Complaint was filed.

7. The applicant in Bail Application No. 2600 of 2021 preferred an application for Bail before the Sessions Court at Pune. The said application was rejected by order dated 8th March, 2021.

8. Learned Advocate for the applicant in both the applications submitted as follows:-

i. There is non compliance of Section 50 of the NDPS Act. The written notice ultimately issued by Investigating Officer does not indicates that the applicants in both the applications were informed that he has right to be searched in the presence of Gazetted Officer or nearest Magistrate.

ii. The Search in respect to C.R. No. 5 of 2019 in the case of applicant Ashok Bhanudas Pawar (Bail Application No. 2600 of 2021) was not conducted on the spot of interception of vehicle. The prosecution case is that the vehicle was stopped. There was recovery of Ganja. The accused alongwith vehicles were taken to the Customs Office and thus the search was conducted at different place. It was necessary for the Investigating Officer to conduct the search at the spot where the vehicle was allegedly intercepted.

iii. From the panchanama of seizure in respect to C.R. No. 2 of 2018 (Bail Application No. 355 of 2020), it is noticed that the seizure had resulted in guide leaves with fruit tops. However the descriptions of Articles received by the chemical analyser appears to be different. The CA report mentions that 25 grams dry green color vegetative material comprising flowring and fruiting tops,

leaves and seeds etc, stated to be 25 grams dry green leaves with flowering and and fruting tops were received.

iv. The applicant are not having any criminal antecedents.

v. There is discrepancy in the materials seized and sent to CA in connection with C.R. No. 5 of 2019. In the panchanama it was stated that green leaves, fruits were seized. The CA report refers to the articles received for analysis.

vi. Samples of 25 grams were collected which was dry leaves subsequently the weight was increase to 29 grams.

vii. The Investigating Officer had seized leaves, fruits, tops, leaves shoots and seeds etc. As a result of that the weight of seizure had increased. Only ganja was to be weighed and it could have been less than a commercial quantity.

viii. No sooner is the seizure is effected and the contraband forwarded to the officer in-charge of Police Station or the officer empowered, the officer concern is in law duty bound to approach the Magistrate for the purposes mentioned under Section 52-A of the NDPS Act including grant of permission to draw the respective samples in his presence. Each samples will be enlisted and correctness of the list of samples so drown certified by the Magistrate. The process of drawing of samples has to be in the

presence and under supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

9. Learned Advocate for the applicants has relied upon following decisions:-

i. In the case of Hari Mahadu Valse Vs. The State of Maharashtra decided by this Court in Bail Application No.2299 of 2019 dated 29th July, 2021.

ii. In the case of Sanjay Mohan Garad Vs. The State of Maharashtra decided by this Court in Bail Application No.459 of 2021 dated 23rd November, 2021.

iii. In the case of Dhananjay Babaso Shinde Vs. The State of Maharashtra decided by this Court in Bail Application No.1069 of 2020 dated 17th November, 2021.

iv. In the case of Ravi Raju Mane and Ravan Puma Naik Vs. The State of Maharashtra decided by this Court in Bail Application No.2020 of 2017 dated 10th November, 2021.

v. In the case of Suresh Hetram Vs. The State of Maharashtra decided by this Court in Bail Application No.4430 of 2021 dated 3rd February, 2022.

vi. Union of India Vs. Mohanlal and Another (2016), 3 SCC 379.

10. Learned Advocate for the respondents submitted that the offence is of serious nature. The applicants in both in cases were found in possession of huge quantity of Ganja. The discrepancies pointed out by the Advocate for the applicant does not affect the prosecution case proposal safeguards were complied. The grounds urged by the applicants will have to be established during trial. Section 37 of the NDPS Act imposition restriction and grant of bail. In the order relied upon by the learned Advocate for the applicants. The Court have ignored rigours of Section 37 of the NDPS Act. Ganja was of commercial quantity. Hence applications may be rejected.

11. In both the cases, the accused were found in possession of Ganja. It was a commercial quantity. In C.R. No. 2 of 2018 the weight of recovered Ganja 33.250 KG's and in C.R. No. 5 of 2019 the weight of Ganja was approximately 52.300 kgs. Section 37 of the NDPS Act creates embargo for grant of bail. The discrepancy urged by the applicants will have to be considered during trial. In the complaint and in the panchanama it is stated that Section 50 was complied. In the case of State of Punjab Vs. Baldev Singh AIR 1999 SC 2378, it was held that where Section 50 of the NDPS Act is complied or not has to be determined by the Court on the basis

of evidence relied at the trial. Without giving an opportunity to the prosecution to establish at the trial that the provisions of Section 50 and particularly the safeguards provided were duly complied with. It would not be permissible to cut short a criminal trial.

12. On the basis of grounds urged by the applicants, it is not possible to disbelieve the prosecution case. Effect of Section 37 of NDPS Act cannot be ignored. All the grounds urged by applicants will have to be dealt with while recording evidence during trial. Hence, no case for grant of bail is made out.

ORDER

. Bail application No.355 of 2020 and Bail Application No.2600 of 2021 are rejected and disposed off.

(PRAKASH D. NAIK, J.)