

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

BAIL APPLICATION NO. 1793 OF 2021

Jitendra Yedunath Upadhyay

.... Applicant

v/s.

The State of Maharashtra

.... Respondent

Ms. Lochan Chandka a/w. Mr. Rounak Naik for the Applicant.

Ms. Veera Shinde, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 22nd APRIL, 2022.

P. C. :-

. This is an Application under section 439 of Cr.PC. filed by the aforesaid Applicant who is facing trial in NDPS Special Case No.282/2021 pending on the file of Special Judge (NDPS), Thane for offences punishable under sections 8C, 22(B) and 29 of Narcotic Drugs and Psychotropic Substances Act.

2. The case of the prosecution is that on 02/02/2021, Ravindra Rangrao Katkar, Sr. PI had received information that a person by name Jitendra Upadhyay was likely to come near old Passport Office, Thane with ganja. Accordingly, he formed a raiding team and proceeded towards Old Passport Office, Thane. At about 13:35 hours, they intercepted one activa scooter. The rider of the scooter disclosed his

name as Jitendra Upadhyay – the Applicant herein. He was explained the purpose of the raid and after apprising of his rights under section 55 of the Act, his personal search was taken. He was found in possession of 3.13 kgs of ganja worth Rs.45,000/-. Two packets of ganja weighing about 24 gms was packed and sealed in presence of panchas after following the necessary procedure and the Applicant was placed under arrest. The seized material was forwarded for CA. Upon completion of the investigation, charge sheet came to be filed against the Applicant for committing offence as stated above.

3. Ms. Lochan, learned counsel for the Applicant submits that the mandatory provision of section 50 has not been complied with. She further states that there is also discrepancy in the weight of the seized material. She submits that the ganja was not sealed at the spot and that there is discrepancy in the description of seized ganja as recorded in the panchanama viz-a-viz sample sent for chemical analysis.

4. Learned APP submits that mandatory provision of section 50 has been complied with. She further submits that reason for not sealing the substance has been mentioned in the panchanama. The Applicant has criminal antecedents and is not entitled for bail.

5. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

6. It is the case of the prosecution that information was received that the Applicant would be coming to the Old Passport Office with ganja weighing about 3.50 kgs. It is stated that the vehicle of the Applicant was intercepted and that he was apprised of his rights under section 50 of the NDPS Act. The panchanama states that the Applicant was apprised of his rights under section 50 of NDPS Act and that the contents of the same were explained to him in hindi. However, the copy of the notice which is placed on record reveals that the contents were recorded in hindi. The panchanama indicates that after the contraband substance was seized, the same was measured at the spot and later they proceeded to Wagle Estate Police Station with the accused and that the substance was sealed at Wagle Estate Police Station. The records thus indicate that the substance was not sealed at the spot even though, it was not a case of chance recovery. There is also discrepancy in the weight as the panchanama indicates that the weight of two sample packets was about 25 gms and the balance substance weighed 2 kgs whereas the panchanama dated 28/03/2021 records that the weight of the balance substance was 2 kgs and 900

gms and that of the two samples was 31.3 gms.

7. The above facts and circumstances would justify grant of bail. Furthermore, the Applicant is in custody since 02/02/2021 and charge is not yet framed. There is no likelihood of the trial being concluded in near future. Under the circumstances and in view of discussion supra, the Applicant is entitled for bail. Hence, the Bail Application is allowed on following terms and conditions :-

- (i) The Applicant who is facing trial in NDPS Special Case No.282/2021 pending on the file of Special Judge (NDPS), Thane, is ordered to be released on cash bail in the sum of Rs.50,000/- for a period of four weeks ;
- (ii) The Applicant shall, within the said period of four weeks, furnish PR. bonds in the sum of Rs.50,000/- with one or two solvent sureties in the like amount ;
- (iii) The Applicant shall report to Crime Branch, Unit – I, Thane once in two months on every 1st Monday between 11.00 a.m. to 12.00 noon until further orders;

- (iv) The Applicant shall not interfere with the complainant and the other witnesses and shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (v) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.
- (vi) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

8. Bail Application stands disposed of in above terms.

**PREETI
H JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

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PREETI H JAYANI
Date: 2022.05.04
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