

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4279 OF 2021

Arun Baliram Jadhav

..Applicant

V/s.

The State of Maharashtra

..Respondent

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NITIN
CHAVAN

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Mr. Sachin Deokar for the Applicant.

Mr. R.M.Pethe, APP for the Respondent/State.

CORAM : C.V. BHADANG, J.

DATE : 23 MARCH 2022

P.C.

1. By this application, the Applicant (accused No.1) is seeking release on bail in Crime No. 2104 of 2020 of Police Station Yerwada, District Pune under Section 8(c), 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short).

2. The aforesaid crime is registered on the basis of the complaint dated 17.09.2020 lodged by police head constable Ramesh Kadu. He states that during the course of the patrolling on 16.09.2020 a TATA Zest car bearing No. MH-14-GU-7922 was intercepted while proceeding from Shastrinagar chowk to Golf Club Chowk, Yerwada at Pune. He states that when the

driver was asked to stop the car, the driver without following the direction, made an attempt to flee along with the vehicle. The said vehicle was chased and was finally intercepted and stopped in front of Mutha Towers building, Don Bosco School Road, Shastri Nagar, Yerwada at about 16.10 hrs. He states that the Applicant was the driver of the said vehicle and there were two others occupants. Their personal search as well as the search of the vehicle taken. It is the material prosecution case that in the search of the vehicle, in the dicky of the car a total 130 kgs 250 grams of *Ganja* stored in 5 gunny bags worth Rs.19,53,750/- was recovered. In this case, after investigation, a chargesheet is filed.

3. I have heard the learned counsel for the Applicant and the learned APP. With the assistance of the learned counsel for the parties, I have gone through the record.

4. It is submitted by the learned counsel for the Applicant that there was non compliance with the provisions of Section 42 and Section 50 of the NDPS Act. It is submitted that the Applicant was merely a driver of the vehicle in which there were two other occupants. It is submitted that vehicle was a transport vehicle and therefore, no conscious possession of the contraband can be attributed to the Applicant. It is pointed out that the Applicant was not the owner of the car. Lastly, it is submitted that the Investigating Officer has failed to separate the contraband

allegedly recovered inasmuch as Section 2(iii)(b) of the NDPS Act defines *Ganja* to be the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves). It is submitted that the Applicant has been arrested on 17.09.2020 and the investigation is complete and the further detention is not warranted.

5. The learned APP has pointed out that this was a chance recovery as it was made during the course of the patrolling. It was submitted that the recovery was not on a personal search and therefore, Section 50 of the NDPS Act is not attracted. There was attempt to flee on the spot along with the vehicle, which would prima facie indicate a guilty mind/conscious possession by the Applicant, who was driving the vehicle. He submitted that the contraband recovered as mentioned in the complaint dated 17.09.2020 answers the definition of *Ganja* under Section 2(iii) (b) of the said Act.

6. I have given my anxious consideration to the circumstances and the submissions made.

7. Prima facie it appears that the recovery was made during the course of the regular patrolling. The Applicant was admittedly driving the said vehicle, although he is not shown to be the owner. The complaint shows that when the Applicant was

asked to stop the vehicle, he made an attempt to flee along with the vehicle and ultimately the vehicle could be stopped at Shastri Nagar, Yerwada, Pune. It can be seen that this is not a case of recovery of the contraband in personal search and therefore, as rightly submitted on behalf of the prosecution, Section 50 of the NDPS Act may not apply inasmuch as the recovery was from the dicky of the said vehicle. The contraband recovered has been described in the complaint at clause No.5 which shows that it comprises of the flowers and fruiting tops of the cannabis plant. It can be seen that as per Section 2(iii)(b) of the Act, cannabis essentially means and covers the flowering and fruiting tops of the cannabis plant, excluding the seeds and leaves only if they are not accompanied by the tops. In this case, it appears that what is recovered was flowering and fruiting tops of the cannabis plant which are included in the definition of *Ganja*. The quantity recovered is commercial quantity and therefore, rigours of Section 37 NDPS Act would apply. No case for grant of bail is made out.

8. The criminal application is rejected.

9. It is made clear that the observations herein are essentially of a prima facie nature and the learned Special Court shall not be influenced by the same at the trial.

(C.V. BHADANG, J.)