

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4430 OF 2021

Suresh Hetram

..Applicant

V/s.

The State of Maharashtra

..Respondent

Mr. Ayaz Khan for the Applicant.

Mr. A.R. Kapadnis, APP for the Respondent/State.

CORAM : C.V. BHADANG, J.

DATE : 3 FEBRUARY 2022
(Through Video Conferencing)

P.C.

1. By this application, the Applicant is seeking release of bail in Crime No. 453 of 2021 of Police Station Vadgaon, District-Kolhapur, under Section 8 (c), 20 (b)(ii) (A) and 17(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985('the Act' for short).

2. The prosecution case is that on 05.08.2021 at about 12.45 hours, a raid was conducted, prior information, at Hotel Samrathal, Ambakwadi Phata on the Pune-Bangalore Road Highway in the following contraband articles were recovered

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(i) 650 grams of greenish leafy substance partially moist suspected to be *Ganja*.

(ii) 6 kgs and 320 grams of opium gondas.

(iii) 3 kgs 725 grams of opium gondas in powder form.

The said hotel was being run by the present Applicant.

It appears that 25 grams of samples were separated from each of the substances, which have been marked as Exh. B1, B2 and B3, while the remaining quantity was sealed and marked as Exh. A1, A2 and A3. Subsequently, the Investigating Officer in compliance of Section 52A(3) of the Act had produced the samples and remaining quantity recovered before the learned Judicial Magistrate First Class at Peth, Vadgaon. There is a certification of inventory made by the learned Magistrate on 06.08.2021, which shows that sample B1, B2 and B3 measured respectively 0.030 grams, 0.028 grams and 0.031 grams. Insofar as the actual contents are concerned (excluding wrappers), the samples were found to be containing 0.27 grams (B1), 0.28 grams (B2) and 0.030 grams (B3). They were accordingly resealed with the seal of the Magistrate. Then there is a forwarding letter dated 11.08.2021 by which the samples are shown to be sent to the Chemical Analyst at Kolhapur.

3. In this case, the report of the Chemical Analyst is awaited. However, on account of the completion of the rest of the investigation, a chargesheet is already filed.

4. I have heard the learned counsel for the Applicant and the learned APP.

5. It is submitted that by the learned counsel for the Applicant that the quantity of the samples do not match with the quantity of the contraband found by the learned Magistrate in the certification under Section 52A(3) of the Act. Secondly, it is submitted that the forwarding letter does not show that the samples with the seal of the Magistrate have been sent, inasmuch as, the forwarding letter bears the seal of the concerned Police Inspector. Thirdly, it is submitted that the learned Special Judge was in error in holding that the quantity of 'poppy straw' recovered is a commercial quantity. He submitted that insofar as *Ganja* is concerned, the commercial quantity is in excess of 1 kg while in respect of 'poppy straw' as defined in Section 2(xviii), it is 50 kgs (item No. 110 of the Table to the notification under the said Act).

6. It is submitted by the learned counsel for the Applicant that the substance found cannot be said to be opium within the meaning of Section 2(xv) inasmuch as "opium" means the coagulated juice of the opium poppy and any mixture, with or without any neutral material, of the coagulated juice of the opium poppy. Thus, in short, it is submitted that neither *Ganja* nor

‘poppy straw’ which is allegedly recovered is of the commercial quantity.

7. Reliance is placed on behalf of the Applicant, on the decision of the Supreme Court in *Union of India v/s. Mohanlal and others*¹ in order to submit that statutory scheme of the Act envisages production of the seized articles and obtaining of the samples in the presence of the Magistrate, which is not done.

8. The learned APP has submitted that the CA report is not yet received and this Court may await the CA report after which the application can be considered.

9. I have considered the submissions made. Prima facie it appears that the Raiding Officer has obtained samples of 25 grams each, which were designated as B1, B2 and B3. However, when the said samples were opened before the learned Magistrate they were found to be of lesser quantity namely 0.027 grams, 0.028 grams and 0.030 grams respectively. There is also an issue whether the samples having the seal of the Magistrate were sent to the Chemical Analyst. At least prima facie, it appears from the forwarding letter dated 11.08.2021 that samples bearing the seal of concerned Police Inspector and not the learned Magistrate. Thus, prima facie, there is a doubt about identity of the samples which were sent are drawn and sent for the report of the

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Chemical Analyst. In such circumstances, I do not find that it is necessary to wait for report of the Chemical Analyst in this case.

10. In the result, the following order is passed:

ORDER

i) The Applicant be released on bail on executing a PR Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

ii) The Applicant shall undertake to remain present before the learned Special Judge, during the course of the trial.

iii) The Applicant shall not tamper with the prosecution evidence/witnesses.

iv) In the event of breach of any of the conditions, the bail is liable to be cancelled.

v) Bail bonds to be furnished before the learned Special Judge.

vi) The observations herein are of a prima facie nature, and the learned Special Judge shall not be influenced by the same at the trial.

11. The Criminal Application is disposed of in the aforesaid terms.

(C.V. BHADANG, J.)