

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4203 OF 2021

Mr. Amit Shankar Devmare

...Applicant

V/s.

The State of Maharashtra

...Respondent

Mr. Niranjana Mundargi a/w K. Mehta a/w Mr. Siddharth Mehta i/b
Mr. Artaf Shaikh, Advocate, for the Applicant. Mr. A.R. Kapadnis, APP, for
the Respondent/State.

CORAM : N.R. BORKAR, J.

DATE : 18.11.2022.

PC. :

1. This is an application under Section 439 of Code of Criminal Procedure for anticipatory bail.

2. The applicant came to be arrested in Crime No. 64 of 2020 registered at Rajarampuri Police Station, Kolhapur, for the offence punishable under Section 20(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short NDPS).

3. The applicant is accused No. 2 in the aforesaid crime. It is the case of prosecution that on 13/02/2020, on the basis of secret information, accused No. 1 was apprehended and he was found in possession of 640 grams of Ganja. The accused No. 1 during interrogation had disclosed that he purchased the said Ganja from present applicant. The present applicant was then arrested on 16/06/2020. It is alleged that pursuant to the disclosure statement of present applicant, 21.680 Kg. of Ganja came to be recovered.

4. I have heard the learned counsel for the applicant and the learned APP for the respondent/State.

5. The learned counsel for the applicant has invited my attention to the C.A. report. It is submitted that perusal of C.A. report would reveal that the sample was interalia consisting of stalk. It is submitted as per Section 2(iii)(b) of the NDPS Act, the Ganja means flowering on fruiting tops of the cannabis plant and therefore stalks ought not to have included while weighing the seized Ganja.

6. The learned counsel for the applicant submits that this Court in a similar circumstances by an order dated 29/08/2022 in Anticipatory Bail Application No. 2173 of 2022, has released the applicant therein on anticipatory bail.

7. On the other hand, the learned APP for the respondent/State submits that similar submission was made before the Hon'ble Supreme Court in **Shiv Kumar Mishra Vs. State of Goa**¹ and it was rejected.

8. I have perused the Judgment of Hon'ble Supreme Court in ShivKumar Mishra (supra). The Ganja therein was not consisted of stalk. It is not shown that stalks are covered by the definition of Ganja.

9. Considering the facts and circumstances and as there are no other criminal antecedents, I am inclined to release the applicant on bail.

¹(2009)3 Supreme Court cases 797

In the result, following order is passed:

ORDER

- A) The Bail Application is allowed.
- B) The applicant be released on bail in C.R. No. 64 of 2020 registered at Rajarampuri Police Station, Kolhapur, for the offence punishable under Section 20(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985, on executing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one or two sureties in the like amount.
- C) The applicant shall attend the concerned police station once in a month i.e. on the first working Saturday between 11:00 a.m. and 2:00p.m. till the conclusion of trial.

[N.R.BORKAR, J.]