

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 725 OF 2022

Aapsing Ditya Gulvane,
Age : 59 years, Occu. Agri,
R/o. Umrada, Tal-Shirpur,
Dist. Dhule.

Petitioner...**Versus**

The State of Maharashtra
Copy to be served on Government Pleader
In the High Court of Judicature of Bombay
Bench at Aurangabad.

Respondent...

...

Advocate for Petitioner : Mr. Kulkarni Suniket Anil
APP for Respondent/State : Mr. Y. G. Gujrati

...

CORAM : KISHORE C. SANT, J.**DATE : 11th JANUARY 2023.****ORAL JUDGMENT :**

1. Heard the learned Advocates for the respective parties at length.
Hence Rule. Rule made returnable forthwith with consent of the
parties.

2. The petitioner was found in possession of Ganja, that was allegedly grown in his field and that was seized. On that basis, FIR came to be lodged with Shirpur Police Station. It is clearly stated in the FIR that when the police had conducted a search on the basis of secret information, they proceeded to the land and found the present petitioner in the field and arrested him on the land allegedly belonging to this petitioner. After following procedure and filing of charge-sheet, now a case is filed and it is committed to the Court of Additional Sessions Judge, Dhule.

3. The present petitioner filed an application below exhibit-45 seeking discharge under Section 227 of the Cr.P.C. The same came to be rejected by an order dated 28.08.2022 by the learned Additional Sessions Judge, Dhule.

4. It is the main ground pressed in to service by the learned Advocate for the petitioner that the petitioner was not present at the time of search. It is his further case that the description of the spot of the land given one in the panchnama and another in the map prepared

by the Circle Officer defers in the specification and therefore it can be said that the land from which Ganja is seized belong to him. He therefore, states that the learned trial Judge has not taken this fact into consideration and has wrongly rejected the application.

5. The learned APP submits that in fact the petitioner was found in the field at the time of search and seizure of the Ganja. He further submits that the petitioner was arrested and Ganja i.e. valued more than Rs.14,08,000/-, was seized from the spot. The spot in the panchnama and in the map prepared by the Circle Officer in fact is in respect of the same land. There are statements of the witnesses recorded, which show that the petitioner was on the spot, when the search and seizure took place. He submits that it is trite position of law that at the stage of discharge or framing of charge is not a stage to appreciate the evidence. In this case, there is voluminous evidence available on record that is collected by the prosecution during the course of investigation and charge-sheet is filed. He submits that the trial Judge has therefore rightly rejected the application.

6. After hearing the parties and after looking at the annexures to the petition, it is seen that the petitioner was found in the field with Ganja at the time of search and seizure conducted by the police on the basis of secret information. Merely because the specific Gat number and Survey number of the land of petitioner is not mentioned in the FIR, that itself would not lead to conclusion that the spot is not proved. The ground that the petitioner was not present cannot be appreciated at this stage, when his name appears in the FIR and also in his statement recorded by the police. This Court therefore finds that no illegality or perversity is committed by the learned Sessions Judge while passing the order. Hence this Court finds that there is no merit in the Writ Petition and the same deserves to be dismissed and the rule is discharged. Needless to say that all interim reliefs' orders are vacated.

7. The Writ Petition is disposed off in the aforesaid terms.

[KISHORE C. SANT, J.]