

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

BAIL APPLICATION NO.1060 OF 2023

Rahul Babasaheb Pawar
Age: 32 years, Occu: Driver
R/o: Kasba Galli, Kharda, Tq. Rahata
Dist. Ahmednagar

... Applicant

Versus

The State of Maharashtra
Through Police Inspector
Loni Police Station
Tq. Rahata, Dist. Ahmednagar

... Respondent

...

Mr. G. K. Naik, Advocate for the Applicant
Mr. K. S. Patil, APP for Respondent/State

...

CORAM : S. G. CHAPALGAONKAR, J.

Reserved On : 29.09.2023

Pronounced On : 07.10.2023

FINAL ORDER :-

1. Heard the learned Advocate appearing for the applicant and the learned APP for the respondent/State.
2. By this application, the applicant seeks regular bail in connection with Crime No.345/202 dated 27/08/2021, registered with Police Station, Loni, Taluka Rahata, District Ahmednagar, for the offences punishable under Sections 20(b), 22 and 23(c) of the Narcotic Drugs and Psychotropic Substance Act, 1985 [for short 'NDPS Act'].

3. The investigation was set in motion on the basis of information given by one Deepak Laxman Rokade, a Police Officer, attached to Loni Police Station. It was reported that, on 26/08/2021 while the police patrolling, at about four o'clock, they noticed a pick-up van bearing Registration No.MH-25-P-1294 was suspiciously parked by the side of the road. On enquiry, with the driver of the vehicle, he introduced himself as Rahul Babasaheb Pawar and the cleaner as Datta Maruti Chavan. They informed that, the vehicle is loaded with poultry feeder. On search of the vehicle, it was noticed that, the narcotic substance / ganja was loaded in vehicle, packed in twenty gunny bags containing 240 packets, cumulatively weighing about 550 kg. The contraband consists of green coloured dried leafs, moisturized sticks and seeds. Immediately, the accused alongwith vehicle was driven to the police station for further action. The applicant / driver of the Jeep was immediately arrested. Since then, he is behind the bars. After completion of investigation, charge-sheet is filed for the offenses punishable under Sections 20(B), 22 and 23(C) of NDPS Act against in all four accused persons, including the present applicant.
4. The applicant moved his Bail Application No.93/2022 before this Court for grant of bail. However, on disinclination, the application has been withdrawn and disposed of vide order dated 16/02/2022. Later on, the applicant moved another application [Exhibit-32] in Special Case No.57/2021 before Court at Kopergaon seeking bail. However, learned Special

Judge rejected his prayer vide order dated 25/04/2022.

5. Mr. Thigle, learned Advocate appearing for the applicant would submit that, although the previous application filed by the applicant has been withdrawn on disinclination of this Court to grant the bail, the present application is filed on the ground that, there is no progress in the trial and till this date, charges are not framed. He would submit that, the long incarceration without the reasonable ground amounts to pre-trial conviction of the applicant, which violates his right of speedy trial. He would point out that, the special case is pending at the stage of framing charges since 12/09/2022. In this situation, bar under Section 37 of NDPS Act can be relaxed and the applicant may be released on bail by putting appropriate conditions to protect the interest of prosecution.

In support of his contentions, he relies upon the order dated 25/01/2023 in SLP (Crl) No.6690/2022 in the matter of **Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh** and contends that, in similar situation, the Hon'ble Supreme Court released undertrial prisoner on bail by putting certain conditions. He would further rely upon the judgment of this Court in the matter of **Union of India Vs. Yogesh Narayanrao Deshmukh and Ors.**¹. Mr. Thigle, learned Advocate would further submit that, even on merits, the applicant is entitled for grant of bail on account of various breaches of procedural aspects required to be complied under the provisions of NDPS Act.

6. Learned APP however strongly opposes the application. He would submit that earlier bail application filed by the applicant is withdrawn on disinclination by this Court. No fresh grounds are available for grant of bail and in absence of change in circumstances, the successive bail application cannot be entertained.
7. Having considered the submissions advanced, apparently, the applicant has been arrested in subject crime when his vehicle was searched and found carrying large quantity of the contraband substance. The inventory report shows that more than 510 kg. Cannabis / narcotic substance worth Rs.75,00,000/- was found loaded in the vehicle. The report of the chemical analysis is made part of charge-sheet, which supports that, the contraband seized from the vehicle is the ganja within the meaning of Section 2(b) of NDPS Act. Initially, the applicants prayer for grant of bail was rejected on merit by the Special Judge. Thereafter, the applicant had approached this Court vide Bail Application No.93/2022. After hearing the learned Advocate appearing for the applicant, when this Court expressed disinclination to grant the bail, the application was withdrawn and disposed of vide order dated 16/02/2022. Thereafter, the applicant moved a fresh application [Exhibit-32] in Special Case No.57/2021 before Sessions Court, Kopergaon. However, the learned Special Judge, taking into account the previous rejection of bail application so also the material in charge-sheet, rejected the second application vide order dated 25/04/2022. Now

present application is filed without any change in circumstances. It is well settled that the successive bail application can be entertained only with changed circumstances. In absence of that, there is no reason to re-consider the successive plea for grant of bail moved by the applicant .

8. The second contention raised on behalf of the applicant is that, although charge-sheet is filed in the month of October-2021, trial is stuck at the stage of framing of charges. The applicant is behind the bars for more than two years i.e. from 28/08/2021. Indefinite incarceration of the undertrial prisoner violates fundamental right envisaged under Article 21 of the Constitution of India. The bar under Section 37 of NDPS Act would not override the constitutional right of the undertrial prisoner.
9. Although, at first blush, the submissions advanced on behalf of the applicant appears to be lucrative, looking to the fact that the applicant was found in possession of huge commercial quantity of narcotic substance i.e. 550 kg of ganja and fact that, the charged offences are punishable with imprisonment for life in terms of Section 20(b)(c) of NDPS Act so also prima facie material to depicting complicity of the applicant in commission of offence, the case is not fit to enlarge the applicant on bail in light of bar under Section 37 of NDPS Act.

10. Similarly, in such case, the possibility of tampering the evidence so also absconding of the accused cannot be ruled out. However, the purpose would suffice if the trial is expedited. In that view of the matter, no case is made out for grant of bail. However, the Learned Special Judge shall endeavor to forthwith frame the charge and expedite the trial so that it can be finally disposed of within a period of one year from the date of this order.
11. In Resultant, Bail Application stands dismissed with the aforesaid directions.

[S. G. CHAPALGAONKAR]
JUDGE