

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 977 OF 2022

Mr. Maruti Ganpat Janbandhu	 Applicant
v/s.	
The State of Maharashtra	 Respondent

Ms. Uma Kshirsagar Wagle a/w. Mr. Jitesh Jadhav,
Ms. Swati Raut and Ms. Simran Wagle for the Applicant.
Ms. A.A. Takalkar, APP for the State.
Mr. V.P. Nazare, API, Juhu Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 03rd AUGUST, 2023.

P. C. :-

. This is an Application under section 439 of Cr.P.C. filed by the aforesaid Applicant who is facing trial in NDPS Special Case No.39/2022 pending on the file of learned Special Judge (NDPS), Greater Bombay. The said case arises from C.R.No.33/2021 registered with Juhu Police Station, Mumbai for offences punishable under sections 8(c), 20(c), 29 of The Narcotic Drugs and Psychotropic Substances (NDPS) Act.

2. The case of the prosecution in brief is that Officer at Juhu Police Station, Mumbai received information that two persons in Jai Ambe Mata Chawl No.9, V.M. Road, Nehru Nagar, Vile Parle were in possession of contraband. The information was reduced into writing and after following the mandate of section 42, the place was raided. It is stated

that the Applicant was in possession of a gunny bag containing 22 kgs of 'Ganja'. The sample was drawn and the contraband was seized under the panchanama drawn in presence of panchas. The sample drawn at the time of seizure, was sent for CFSL for analysis. The report indicate that the sample tested positive for 'Ganja'. It is also not in dispute that the Investigating Agency has not complied with section 52(A) of the Act.

3. In *Simarnjit Singh v/s. State of Punjab (Criminal Appeal No.1443/2023)*, the Apex Court while setting aside the conviction for non-compliance of section 52A of the NDPS Act, observed that drawing samples from all the packets at the time seizure is not in conformity with the law laid down by this Court in the case of Union of India v/s. Mohanlal and anr. (2016) 3 SCC 379 and it creates serious doubt about the prosecution's case that substance recovered was a contraband.

4. The Applicant is in custody since 17/07/2021. Charge is not yet framed. Considering the large pendency, there is no possibility of the trial being concluded within a reasonable time. In view of the above facts and circumstances and considering the discrepancy in drawing the sample, the Applicant is entitled for bail. Hence, the Application is allowed on the following terms and conditions :-

(i) The Applicant - Maruti Ganpat Janbandhu who is facing trial

in NDPS Special Case No.39/2022 pending on the file of learned Special Judge (NDPS), Greater Bombay arising out of C.R.No.33/2021 registered with Juhu Police Station, Mumbai, is ordered to be released on bail on furnishing P.R. bonds in the sum of Rs.30,000/- with one or two solvent sureties in the like amount ;

- (ii) The Applicant shall report to Juhu Police Station, Mumbai once in three months on every 1st Monday of the month between 11.00 a.m. to 02.00 p.m. till framing of the charge ;
- (iii) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case in any manner ;
- (iv) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.
- (v) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

5. Bail Application stands disposed of in above terms.

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(SMT. ANUJA PRABHUDESSAI, J.)