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

BAIL APPLICATION NO.1035/2023

CHOTU LALMAN VERMA

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENTS

Adv. Ashwini Achari a/w. Adv. Taraq Sayed, Adv. Alisha Parekh for the applicant.

Mr. P. H. Gaikwad, APP for the State.

WAPI Nisha Chavan, Manpada Police Station.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 8, 2023.

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.

2. This is an application for bail in respect of the offence punishable under Sections 8(c), 20(b)(c), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter "NDPS Act", for short) registered on 2/7/2022 vide C.R. No.518/2022 with Manpada Police Station.

3. So far as the co-accused no.2 Mohamed Atif Hafizulla Ansari is concerned, he has been enlarged on bail by an order of this Court dated 5/7/2023 in Bail Application

No.235/2023. The relevant portion of the order reads thus:-

“2. The only contention raised is samples sent to the Chemical Analyser were taken at the spot and not before the learned Magistrate. So the contention is, that if the analysis is done in future, even though positive, cannot be considered as evidence at the time of trial. It is true that the Hon’ble Supreme Court in case of Union of India Vs. Mohanlal and Anr. has deprecated the practice of drawing samples at the spot. It is also true that the Supreme Court in case of Simranji Singh Vs. State of Punjab has refused to accept the evidence of analysis relating to the samples drawn at the spot. What is primary evidence is the procedure followed before the learned Magistrate and documented therein as contemplated under section 52(A)(4) of NDPS Act. Unfortunately, these things have not happened in this case.

3. The present Applicant was one amongst two, who were found in open ground on Manpada. They were found on 2nd July 2022, they were traveling in car. After completing procedure, the search was taken and seven gunny bags were found in the car. All bags consisted of Ganja, all of commercial quantity. They have taken seven samples, one each from one gunny bag. The FIR is lodged by ASI with Manpada police station on 2nd July 2022.

4. Finally, the charge-sheet is filed against four accused persons. The present Applicant is accused No.2, who was occupant of that car. Page 22 consists of description of samples drawn at the spot, whereas page 73 is letter written to the Chemical Analyser there by forwarding those seven samples. Whereas page 84, is certificate issued by the Magistrate about inventory, before him samples were not taken. So question of sending it to the Chemical Analyser does not arise. On this background the evidence adduced before the trial Court will not

withstand the scrutiny of law, so the bar under section 37 of the NDPS Act is lifted.”

4. The applicant was not found in possession of the contraband. The applicant is the accused no.4. The co-accused Mohamed Atif Hafizulla Ansari was found in possession of contraband ‘ganja’ weighing 172 grams has enlarged on bail.

5. Learned APP opposed the application. He invited my attention to the affidavit filed by the respondent. It is submitted that applicant has helped the co-accused in purchasing the ‘ganja’ from absconding accused Sandip Anna who is from Orissa and there are call detail records to show that the applicant is in constant touch with the co-accused.

6. For the purpose of this application, suffice it to mention that the co-accused from whose possession the contraband was seized has been enlarged on bail. There are observations made in paragraph 4 of the order dated 5/7/2023 quoted hereinbefore. The applicant can claim parity.

7. Learned APP then pointed out that there are several

antecedents reported against the applicant. The antecedents are in respect of the bodily offence. There is one antecedent under the NDPS Act registered with the NCB, Byculla. The present offence is registered with Manpada Police Station.

8. Learned counsel for the applicant is willing to reside outside the jurisdiction of the Mumbai/Mumbai Suburban District till further orders of the trial Court.

9. The application was arrested on 19/7/2022 and now is in custody for more than one year and four months with no possibility of the trial concluding any time soon. The investigation is complete. The charge-sheet has been filed. The applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Chotu Lalman Verma in connection with C.R. No.518/2022 registered with Manpada Police Station shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one or more sureties in the like amount.
- (c) The applicant shall attend the Investigating Officer of

Manpada police station once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m. till the trial concludes

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(f) Except for attending the trial in the present case and the other cases and for the purpose of reporting to the Investigating Officer, the applicant shall not enter the Mumbai/Mumbai Suburban District after being released on bail, till the trial concludes.

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(h) The applicant shall surrender his passport, if any, to the investigating officer.

10. It is made that these observations are prima facie in nature and the trial Court should not be influenced by any of them.

11. The application is disposed of.

(M. S. KARNIK, J.)