

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 4016 OF 2021

Sudhakar Narsingh Kamble ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Mithilesh Mishra instructed by Mr. Raju Mate for the Applicant.

Ms. Rutuja Ambekar, APP for the State.

Mr. Amit Munde, SPP for the Custom Department (Narcotic Cell), Pune.

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CORAM : N.R. BORKAR, J.

DATED : 15 MARCH 2023

P.C. :-

. This is an application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of bail.

2. The applicant came to be arrested in Crime No. 5 of 2019 registered by Customs Department (Narcotic Cell), Pune for the offences punishable under Sections 8(c), 20(b)(C) of the Narcotic Drugs and Psychotropic Substances Act.

3. I have heard the learned Counsel for the applicant, the learned APP for the State and the learned Standing Counsel for Respondent No.2 – Custom Department.

4. According to the prosecution, on the date of incident, which took place on 29 May 2019 the co-accused Ashok Pawar was intercepted and 52kgs. of Ganja was found in his possession.

5. The learned Counsel for the applicant submits that the applicant is in jail for more than three and half years and the trial is still at the stage of framing of charge. It is submitted that nothing incriminating was found in possession of the applicant.

6. On the other hand the learned standing Counsel for the Respondent No.2 submits that there is a material in the form of CDR to show that the applicant and co-accused were in contact with each other. It is submitted that considering the nature of offence the applicant may not be released on bail.

7. The learned standing counsel for Respondent No.2 in support of his submission has relied upon the Judgment of the Hon'ble Supreme Court in *Narcotics Control Bureau v. Mohit Aggarwal*¹.

8. I have perused the complaint filed by the Respondent No.2. Para 16 of the said complaint reads thus :

“16. Statement of accused person Shri Ashok Bhanudas Pawar

Based on the summons issued on 30.05.2019, statement of Shri Ashok Bhanudas Pawar was recorded on 30.05.2019 on his request by the Inspector of Narcotics Customs Pune under Sec 67 of NDPS Act 1985 wherein he has admitted the

1 AIR 2022 SC 3444

following facts :-

- (i) That he is 26 years old and is a driver by profession.*
- (ii) That his resident address is Taluka : Karmala, Dist : Solapur, Vadgaon, Maharashtra where he has been living with his mother.*
- (iii) That he was introduced to Shri Kiran Ganpat Pankar by one person namely Shri Mahindra two months back.*
- (iv) That he has sold Ganja to Shri Mahindra 3-4 times in the past.*
- (v) That he told Shri Kiran Ganpat Pankar that he is into the business of selling Ganja and if he also needs, he can deliver it in Pune.*
- (vi) That they exchanged mobile numbers.*
- (vii) That on 29-05-2019 Shri Kiran Ganpat Pankar called from his mobile No.8888133153 and asked for 25 packets of Ganja to be delivered in Pune to which he agreed.*
- (viii) That 29-05-2019, he called Shri Kiran Ganpat Pankar and confirmed that he will bring Ganja near Khadki Railway Station, Pune on 30-05-2019 morning at around 4-5 a.m., and asked Shri Kiran Ganpat Pankar to come to Khadki Railway Station, Pune.*
- (ix) That he started for Pune in the evening at about 6 to 7 p.m. from his home in Vadgaon, with two plastic bags containing Ganja loaded in Vehicle No. MH-12 EM 7377 (Mahindra Scorpio).*
- (x) That he took the vehicle No. MH-12 EM 7377 (Mahindra Scorpio) from his friend Shri Shivaji Baburao Jadhav by informing that his wife is not well and was taking her for treatment to Pune.*
- (xi) That Shri Shivaji Baburao Jadhav was not aware that his vehicle bearing No. MH-12 EM 7377 (Mahindra Scorpio) will be used for transporting the Ganja to Pune.*
- (xii) That Shri Shivaji Baburao Jadhav is not involved in purchase sale or transport of Ganja.*
- (xiii) That he travelled via Bhigwan Hadapsar Ruby hall and reached near Khadki Station Pune around 5:00 Hrs. on 30.5.2019.*
- (xiv) That Kiran Ganpat Pankar was already waiting for him alongwith Sudhakar Narsingh Kamble in vehicle No. MH-12*

NB 0466 (Maruti Swift Dzire).

(xv) That on reaching near Khadki Station he parked his vehicle No. MH-12 EM 7377 near vehicle of No. MH-12 NB 0466 and started transferring the plastic bags from the rear seat of the vehicle when the officers of Customs narcotics cell intercepted them near the two vehicles parked near Khadki Railway Station.

(xvi) He admitted that he has in the past delivered ganja to Kiran Ganpat Pankar 3 to 4 times, on cash payment.

(xvii) That the seized 25 packets of Ganja packed in two plastic bags was purchased by him from one lady named Sonali of Paranda Village, Dist : Osmanabad, Maharashtra @ Rs.8,000/- per kg.”

9. Prima-facie, there appears to be no connection of the present applicant with the Ganja which was found in possession of co-accused Ashok Pawar except the fact that he was accompanying the co-accused Kiran Ganpat Pankar.

10. The applicant is in jail for about 3 years and 6 months and the trial has not yet commenced. Considering the overall facts and circumstances, I am inclined to release the applicant on bail. Hence, the following order is passed :

(i) Application is allowed.

(ii) The applicant - Sudhakar Narsingh Kamble be released on bail in Crime No. 5 of 2019 registered at Customs Department (Narcotic Cell), Pune for the offences punishable under Sections 8(c), 20(b)(C) of the Narcotic Drugs and Psychotropic Substances Act, on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

(iii) The applicant shall attend the office of Custom Department, Narcotic Cell, Pune, once in a month i.e., on first Saturday between 11.00 a.m. to 2.00 p.m. till conclusion of trial.

(N.R. BORKAR, J.)

KANCHAN
PRASHANT
DHURI

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by KANCHAN
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