

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3145 OF 2022**

Pravin Vishambhar Chaudhary ...Applicant
vs.
State of Maharashtra ...Respondent

Mr. Ayaz Khan for the Applicant.
Mr. H. J. Dedhia APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 5TH JULY 2023

P. C. :

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State. The Officer is present.
2. The police of Anti Narcotic Cell, Crime Branch, have charge-sheeted four accused and present Applicant is accused No.3-Pravin. FIR is lodged by ASI Dilip Tadvi, Crime Branch.
3. After getting information that two persons are going to arrive in car for purpose of selling of "Charas" on Kalyan-Shil Road in

front of Riverhood park, the raiding party after completing procedure went there. The accused – Errik Klenn was found in possession of one blue colour plastic bag. It consisted of “Charas”, whereas accused-Sumet Kasbe was found with one packet. It also consists of contraband “Charas”, whereas present Applicant-Pravin was found with one bag consisting of 200 grams of “Charas”. FIR came to be lodged with Shil-Daighar police station. The samples were taken at the spot. It finds place on page 32. Two samples were taken. The contraband “Charas” was found with the present Applicant. They were numbered as A-1 and A-2 and remaining samples were numbered as B-1, B2 and C-1 and C-3.

4. After completing investigation, the charge-sheet is filed. There is report given by Chemical Analyser, which says that it is “Charas”. It is on page 80 and certificate is there on page 89. Apart from that police of Crime Branch, Thane has produced the seized muddemal before the learned Magistrate. It is dated 4th September page 89. What was produced before the learned Magistrate was A, A-2, B, B-2, apart from other seized articles. After completing the procedure, learned Magistrate has issued certificate under Section 52-A of the

NDPS Act. Contention is that whatever was sent to the Chemical Analyser was from the samples drawn on the spot. It cannot be accepted as evidence during trial. There is reliance to the observations in case of *Union of India Vs. Mohanlal and Anr.*¹ and in case of *Simranjit Singh Vs. State of Punjab*². It is further contended that even though the prosecution claims that certain inventory was taken before the Magistrate, it is not their case that certain samples were drawn before the learned Magistrate, and thereafter they were sent to the Chemical Analyser. It is undisputed situation.

5. Learned APP submitted that the prosecution be given liberty to prove the case before the trial Court. Be that it may, as on today, even though inventory was taken before the Magistrate, the samples were not taken, so there is no question of sending it to the Chemical Analyser. Whatever samples were drawn on the spot were sent to the Chemical Analyser, however, recently, the Supreme Court in *Simranjit* (supra) has refused to accept this piece of evidence. This observation holds good as on today.

1 (2016) S SCC 379

2 Cri.Appeal No.1443/2023 dt. 9/05/2023 Supreme Court

6. Furthermore, it is contended that quantity found with the Applicant was not commercial quantity but it was intermediate. In view of that, bar under section 37 of the NDPS Act would not be applicable. There are not other antecedents. The Applicant is entitled to be released on bail. Hence, the following order is passed :

O R D E R

- (a) The Applicant-Pravin Vishambhar Chaudhary be released on bail in connection with C.R. No.II-204 of 2021, registered with Shil-Daighar police station for the offences punishable under Sections 8(c), 20(c), 20 (b) and 29 of the NDPS Act, on furnishing personal bond and surety bond of Rs.50,000/-
- (b) The Applicant shall not threaten the prosecution witnesses or allure them in any manner.
- (c) The Applicant shall give attendance to the Nayanagar police station on every first Monday of every month from 10 am to 12 noon for one year.
- (d) Needless to say, violating of the condition above will make the

Applicant liable for cancellation of bail, after notice to the Applicant.

7. Application is disposed of accordingly.
8. These are my prima facie observations and the trial Court may not be influenced by that.
9. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]