

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

CRIMINAL BAIL APPLICATION NO. 3636 OF 2022

Sagar Nana Borkar

...Applicant

V/s.

The State of Maharashtra

... Respondent

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Mr.Ganesh Gupta a/w Ms.Deepak Gupta, Mr.Sahil Ghorpade,
Mr.Aditya Amborkar i/b G.G. Legal & Associates, for the Applicant.
Ms.P.N. Dabholkar, APP for the Respondent-State.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th SEPTEMBER 2023

P.C:-

1. By this Application, Applicant is seeking bail in Crime No.16 of 2022 registered with Bharati Vidyapeeth Police Station, Pune for the offences punishable under Sections 8(c), 22(b)(ii)(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act ('NDPS Act' for short).

2. It is prosecution's case that, on 8th January 2022, the police apprehended the Applicant and the co-accused in collaboration with the Anti Narcotic Cell, Pune and they found, 10.319 kg of

contraband (Ganja), in possession of the Applicant and 11.245 kg contraband in possession of the co-accused.

3. It is contention of the learned counsel for the Applicant that, contraband found in possession with the Applicant, was of a intermediate quantity and not a commercial quantity. The learned counsel further submitted that Section 50 of the Narcotic Drugs and Psychotropic Substances Act, has not complied by the prosecution. The Applicant is behind bar more than one year. Hence, requested to allow the Application.

4. The learned APP submitted that, Applicant and co-accused were arrested by the police and totalling more than 22 kg contraband was found in their possession. It is of commercial quantity.

5. The learned APP further submitted that, Section 29 is applied against the Applicant, which shows conspiracy between Applicant and co-accused as they were travelling together. The learned APP further submitted that, rigor's of section 37 would be applied, against applicant as commercial quantity of contraband is found. Hence, requested to reject the Application.

6. I have heard both learned counsel. Perused FIR and charge-sheet.

7. Admittedly, police have recovered contraband of totalling 10.319 kg from the possession of the Applicant and contraband totalling 11.24 kg from the possession of the co-accused. It is alleged that, both applicant and co-accused were travelling together and contraband recovered from their possession was commercial quantity. In my view, though applicant and co-accused found together but, they were carrying the contraband individually. The recovery of the contraband from the possession of the Applicant and co-accused should be considered separately and as observed by this Court in case of *Smt.Rashida Iqbal Khan V/s. State of Maharashtra*¹, has taken a same view. Applicant is behind bar more than 1 year and 9 months. Investigation is completed and charge-sheet has been filed.

8. Considering the above facts, further detention of the Applicant is not required.

9. In view of above, I pass following order.

ORDER

(i) The Applicant be released on bail in Crime Crime No.16 of 2022 registered with Bharati Vidyapeeth

1 Criminal Application No.2177 of 2006

Police Station, Pune on furnishing PR bond of Rs.25,000/- with one or two sureties in the like amount.

(ii) After his release from jail the Applicant shall attend the Bharati Vidyapeeth Police Station, Pune once in a month i.e. on every 1st Monday of the month between 11.00 a.m. to 3.00 p.m. till framing of charge.

(iii) The Applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

(iv) Application is allowed in the aforesaid terms.

(SHIVKUMAR DIGE, J.)