

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.20 OF 2023

Sheikh Salman Sheikh Atik

Vs.

State of Maharashtra Through Police Station Officer Police Station Nagpurigate,
District Amravati

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R. M. Daga, Counsel for applicant.

Shri A. M. Kadukar, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 14/06/2023

1. The present application is filed by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.261/2022 registered with Police Station Nagpurigate, District Amravati for the offence punishable under Section of 20, 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). The applicant is arrested on 11.05.2022 since then he is in jail.

2. The crime is registered on the basis of allegation that on 11.05.2022 upon secret information, raid was conducted at the house of applicant and during the search 3 Kg 503 Grams Ganja was found under the mattress of bed. After seizure of contraband the applicant was taken in custody on 11.05.2022 and after investigation the charge-sheet is filed.

3. As per contention of the applicant that as intermediate quantity is found hence Section 37 of the NDPS Act would not attract. It is further contention of the applicant that he is in fact, falsely implicated in the alleged offence. Admittedly, the seized contraband is not the commercial quantity and merely because there are criminal antecedents, he cannot be put behind the bar for indefinite period. Now, investigation is completed, charge-sheet is filed and his further custody is not required. Hence, he be released on bail.

4. The said application is strongly opposed by the State on the ground that though there is intermediate quantity but the quantity is also not so small or meager. There are criminal antecedents against the present applicant, if he is released on bail he may involve similar types of the offence. Hence, application deserves to be rejected.

5. Heard learned Counsel Shri Daga for the applicant. He reiterated the contention and submitted that in view of the observation of the Hon'ble Apex Court the quantity recovered is intermediate and thus section 37 of the NDPS Act is not attracted. He further submitted that now the applicant is in jail for more than one year and therefore, the applicant be released on bail as applicant cannot be put behind the bar for indefinite period. Merely some offences are registered against him

would not come in his way to release him on bail. In support of his contention he placed reliance on **Shaktisinh Shailendrasinh Chauhan Vs. State of Gujarat in Special Leave to Appeal (Crl.) No. 2740/2023 decided on 16.05.2023** wherein the Hon'ble Apex Court considered the accused are arrested for committing the offence under Section 8C, 22B and Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, wherein the total quantity of 18.96 grams of mephedrone worth Rs.9,87,000/- was recovered. The Hon'ble Apex Court has observed that the quantity recovered is intermediate and thus Section 37 of the NDPS Act is not attracted. The Hon'ble Apex Court further considered that the petitioner is in custody for more than one year and released him on bail.

6. He further placed reliance on the order passed by this Court in **Criminal Application (BA) No.1343/2021 (Vilas Ramchandra Kinekar Vs. State of Maharashtra)** decided on 19.01.2023, wherein also this Court has considered that the quantity which is seized from the applicant is not a commercial quantity, and therefore, the provisions of Section 37 of the NDPS Act, are not attracted. This Court has also considered that charge-sheet has already been filed, and further custodial interrogation is not required. He also placed reliance on **Criminal Application (BA) No.1250/2021 (Rakesh Siddharth Janbandhu Vs. The State of Maharashtra**

through PSO PS Hinganghat Dist. Wardha) decided on 22.12.2021 and Criminal Application (BA) No.342/2021 (Chitra P. thakur Vs. State of Maharashtra) decided on 13.05.2021, wherein similar observation is made by this Court.

7. Per contra, learned APP for the respondent/ State submitted that merely because less quantity is recovered is not sufficient to release the present applicant on bail. In support of the contention learned APP placed reliance on **Shiv Kumar Mishra Vs. State of Goa (2009) 3 SCC 797**, wherein the Hon'ble Apex Court has considered the several aspects including the expression Ganja as defined in Section 2(iii)(b) of the NDPS Act and observed that as far as exclusion of the moisture content of the seized ganja is concerned, there is nothing in the NDPS Act to suggest that when the weight of a quantity of ganja is to be ascertained, the moisture content has to be separately ascertained. Thus, the observation of the Hon'ble Apex Court is on a different aspect.

8. Considering the submissions and after going through the papers of the investigation the quantity recovered in the present matter is of 3.5 Kg Ganja was found from the house of accused. The quantity recovered is intermediate as observed by the Hon'ble Apex Court as well as by this Court that it not a commercial quantity

and that by the provisions of Section 37 of NDPS Act, are not attracted. Here in the present case also, the investigation is completed, charge-sheet is filed and further custodial interrogation of the present applicant is not required as well as the applicant is already in jail since last more than one year. No purpose will be served by keeping him behind bar. Considering which a *prima facie* case for bail is made out. Accordingly, I proceed to pass following order.

(i) The application is allowed.

(ii) The applicant namely, Sheikh Salman Sheikh Atik is hereby released on bail in Crime No. 261/2022 registered at Police Station Nagpurigate, Amravati under Section 20 and 22 of NDPS Act, on his furnishing PR bond in the sum of Rs.1,00,000/- with two solvent sureties in the like amount.

(iii) The applicant shall not tamper with the evidence of the prosecution witnesses thereby inducing, pressuring or in any manner.

(iv) The applicant shall remain present before the trial Court on each and every date.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate