



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

901 BAIL APPLICATION NO. 145 OF 2024

Sudhakar Ganpat Shejul.

... Applicant

Versus

The State of Maharashtra.

... Respondent

...
Mr. Vijay Shivaji Wakale, Advocate for Applicant.

Mrs. Pratibha J. Bharad, APP for Respondent / State.

...

CORAM : **SANJAY A. DESHMUKH, J.**

DATE : 09th February, 2024.

P.C.:

1 Heard.

2 This is an application, under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in connection with Crime No.536 of 2023, registered with Mukundwadi Police Station, District Aurangabad City, for the offences punishable under Sections 20(b)(ii), 8(c) and 20(b) of the Narcotic Drugs and Psychotropic Substances Act (for short "NDPS Act").

3 It is averred in the report that the informant, Police Head Constable of Mukundwadi Police Station, got intimation that the applicant was in possession of narcotic drug (cannabis). Therefore, he

took its entry into the intimation book and proceeded to inform his senior officials. He called the Government Panchas, photographer, Gazetted Officer and proceeded alongwith forensic expert of Chattrapati Sambhajnagar to effect the raid. They all went there alongwith necessary instruments for effecting the raid. They reached to the house of applicant and shown the identity of the raiding parties and told that they came to the house of applicant for taking personal search his house. Thereafter, they asked the applicant as to whether he wants to have a Gazetted officer for taking search of his house. He said no. Thereafter, they took search of the house of applicant and they found cannabis/Ganja of 2.212 Kg alongwith polythene bags of 113 grams. The price of that cannabis was Rs.44240/-. It was seized alongwith mobile handset of the applicant and further process of collection of sample etc. was done. The applicant was arrested.

4 The learned counsel for applicant submitted that the quantity is not commercial quantity, therefore, the applicant is entitled for bail. The procedure as contemplated under Section 42(1) of the NDPS Act is not followed i.e. the informant has only reduced into writing that information into the intimation book, however, he had not intimated it to his superiors in writing. The learned counsel for applicant further submitted that the mandate of standing instruction / standing order No.1/88 is not followed. The samples of contraband

have to be collected in presence of Panchas on the spot. Therefore, the entire proceedings vitiate. Considering all these aspects, the learned counsel for applicant submitted that the applicant has no criminal antecedents. He will not flee away from the trial. It is lastly prayed to allow the application.

5 The learned APP for the State strongly opposed the application and contended that the applicant is involved in serious crime. All the legal formalities are complied with by the informant and other officials. The samples are collected and those are sent to the CA for analysis and report. The investigation is in progress. Considering all these aspects, it is lastly prayed to reject the application.

6 Perused the papers of investigation, particularly, report and also inventory made by the learned Judicial Magistrate First Class. It is not disputed that the quantity is 2.235 Kg including the weight of polythene bags of 113 gram. It is certainly below the commercial quantity. The applicant has roots in the society. He has no criminal antecedents. As far as future involvement of this applicant in same nature of crime is concerned, some stringent conditions can be imposed upon him. However, considering the quantity of the contraband, the application deserves to be allowed on certain conditions. Hence, the following order:-

ORDER

- I. The application is allowed.
- II. The applicant in connection with Crime No.536 of 2023, registered with Mukundwadi Police Station, District Aurangabad City, for the offences punishable under Sections 20(b)(ii), 8(c) and 20(b) of the Narcotic Drugs and Psychotropic Substances Act, be released on bail on furnishing personal bond of Rs.50,000/- with surety of the like amount on following conditions:-
 - a) The applicant shall not pressurize the prosecution witnesses and shall not tamper with the prosecution evidence, in any manner.
 - b) The applicant shall not indulge in similar activities again.
 - c) Till filing of the charge-sheet, the applicant shall attend Mukundwadi Police Station twice in a week i.e. on every Monday and Thursday in between 08:00 pm to 09:00 pm.
 - d) The applicant shall not leave Aurangabad district without prior permission of the Trial Court.
 - e) It is clarified that if the applicant commits breach of any of the above conditions, the investigating officer / concerned police station / prosecution is at liberty to file application for cancellation of bail of the applicant before the Trial Court. If such an application is moved, the Trial Court is at liberty to decide the said application on merits without reference to this Court.

[SANJAY A. DESHMUKH, J.]