



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

959 BAIL APPLICATION NO. 192 OF 2024

GOUSKHA SARDARKHA PATHAN
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Applicant : Mr. P. P. More.

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

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

DATE : 10th May, 2024.

P.C.:

1 Heard.

2 This is an application, under Section 439 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C."), for grant of regular bail in connection with Crime No.232 of 2023, registered with Paradh Police Station, District Jalna, for the offences punishable under Sections 20 and 29 of the of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act").

3 It is averred in the report that the police got a secret information that in the agricultural land of this applicant bearing Block No.279, in the crop of Toor and cotton, the applicant has planted and cultivated cannabis plants. Two *Panchas* were called. Police staff was also called. The plants were uprooted and those were seized and sealed. The seizure *Panchanama* was accordingly drawn up. The 2301 kg cannabis of Rs.2,30,00,000/- was seized. Its *panchanama*

was drawn up. Inventory panchanama was drawn up. Accordingly, the report was lodged and applicant was arrested.

4 The learned counsel for applicant submitted that applicant is falsely implicated in the crime. The applicant has roots in the society. He will not flee away from the trial. It is lastly prayed to allow the application.

5 The learned counsel for applicant is relying upon the following case laws:-

I) ***Dnyaneshwar Namdeo Kajale Vs. The State of Maharashtra*** (Bail Application No.2298 of 2023) decided on 15th January, 2024, in which this Court held that, therefore, the quantity of the said Ganja exceeds commercial quantity as per the stand order i.e. more than 20 kg. Thus, the quantity of seized alleged Ganja is more than 350 kg is reasonably doubtful quantity and the applicant is therefore entitled for bail on certain conditions.

II) ***Vinod Nagar Vs. Narcotics Control Bureau*** (Bail Application No.3149 of 2022) decided on 19th February, 2024, in which the Delhi High Court in paragraphs 24 and 25 held as under:-

“24. Another significant aspect which cannot be lost sight of is that the recovery of the contraband was made on 18.06.2021 whereas the application under Section 52A of the NDPS Act was filed belatedly on 24.09.2021. There is no explanation as to why the application was

filed belatedly, however, the same, at this stage appears to be in violation of Section 52A of the NDPS Act, thereby vitiating the procedure for collection of sample. This Court in ***Kashif v. Narcotics Control Bureau : 2023 SCC OnLine Del 2881***, had held that the application for sample collection cannot be moved at the whims and fancies of the prosecuting agency.

25. The Courts are not expected to accept every allegation made by the prosecution as a gospel truth. The bar, as provided in Section 37 of the NDPS Act, cannot be invoked where the evidence against the accused appears to be unbelievable and does not seem to be sufficient for the purpose of conviction of the accused.”

III) ***Sunil Vs. State NCT of Delhi*** (Bail Appln No.1688 of 2022 and Cri. M.A. No.20344 of 2022) decided on 14th February, 2024, in which the Delhi High Court held that as under:

“13. No evidence has also been brought on record that the samples were drawn in the presence of the Magistrate and the list of the samples so drawn were certified by the Magistrate. The mere fact that the samples were drawn in the presence of a gazetted officer is not sufficient compliance of the mandate of sub-section (2) of Section 52A of the NDPS Act.

14. It is an admitted position on record that the samples from the seized substance were drawn by the police in the presence of the gazetted officer and not in the presence of the Magistrate. There is no material on record to prove that the Magistrate has certified the

inventory of the substance seized or of the list of samples so drawn.

16. In the absence of any material on record to establish that the samples of seized contraband were drawn in the presence of the Magistrate and that the inventory of the seized contraband was duly certified by the Magistrate, it is apparent that the said seized contraband and the samples drawn therefrom would not be a valid piece of primary evidence in the trial. Once there is no primary evidence available, the trial as a whole stands vitiated."

6 The learned APP for the State strongly opposed the application and submitted that total of 725 cannabis trees were taken off. There was rain. Therefore, those trees were kept into tractor and taken away to the Police Station Paradh. Accordingly, that fact is noted in the police station diary on 21st September, 2023. On second day, due to the heavy rain, those were taken to godown of Madan Sheth Berad. In the presence of competent officer, *Panchas*, Assistant Agriculture Officer and camera man, total weight of those were found 2301 kg. He further pointed out that the applicant is involved in the serious crime. If he is released on bail then he will certainly commit same nature of crime. The learned APP pointed out the necessary *Panchanamas* drawn under provisions of the NDPS Act.

7 The learned A.P.P. is relying upon the following case laws :

a) ***State by the Inspector of Police vs. B. Ramu*** criminal appeal

arising of S.L.P. (Cri.) No. 8137 of 2022. Para 11 of the same reads as under:-

“11. In case of recovery of such a huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused what to talk of anticipatory bail more so when the accused is alleged to be having criminal antecedents.”

b) In **Mukesh Rajaram Chaudhari Vs. State of Maharashtra, AIR ONLINE 2023 BOM. 2142, paragraph No. 37** which reads as under :

“37. It may be one of the relevant considerations but cannot be the sole consideration on the basis of which the moment it is shown that the procedure under Section 52-A of the NDPS Act is not followed, the accused automatically becomes entitled to bail as a matter of right. The rigors of Section 37 of the NDPS Act would continue to apply. Only when the bail Court is satisfied that reasonable grounds of believing that the accused is not guilty of the offence and that he is not likely to commit any offence while on bail, the bail would be granted.”

c) Union of Indian Vs. Mohanlal, Criminal Appeal No. 652 of 2012 decided on 28.01.2016, AIR ONLINE 2016 SC 606, paragraph 13 reads as under :

“13. The Question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A (4) of the Act, samples drawn and certified by the Magistrate in compliance with Sub Section (2) and (3) of Section

52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure. Be that as it may, a conflict between the statutory provision governing taking of samples and the standing order issued by the Central Government is evident when the two are placed in juxtaposition. There is no gainsaid that such a conflict shall have to be resolved in favour of the statute on first principles of interpretation but the continuance of the statutory notification in its present form is bound to create confusion in the minds of the authorities concerned instead of helping them in the discharge of their duties. The Central Government would, therefore, do well, to re-examine the matter and take suitable steps in the above direction."

d) In **Hira Singh and Anr Vs. Union of India and Anr. AIR 2020 SC 3255**, wherein it is observed as under ,

"Quantity of neutral substances is not to be excluded and to be taken into consideration along with actual content by weight of offending drug, while determining 'small or commercial quantity' of narcotic drug or psychotropic substance."

e) In **Bail Application No. 1725 of 2021 Ajay Vithal Shriram Vs. The State of Maharashtra)** dated 16th March, 2022. In the said order this Court in paragraph No. 11 observed as under :

“From the bare reading of the above definition, it is manifest that seeds and leaves are to be included when the same are accompanied by flower tops or the fruiting tops. In the case at hand, the substance seized shows that the seeds and leave were accompanied by fruiting tops. Therefore, there is no force in the submission of learned counsel.”

8. The learned APP submitted that is observed in the above case laws that the court in case of recovery of narcotic substance should be slow in granting bail. It is lastly prayed to reject the application. Upon considering huge quantity of cannabis of 2301 kg which was seized at the instance of this applicant.

9. Perused the charge-sheet. Huge quantity of cannabis plants are seized at the instance of this applicant. The applicant is booked for serious crime. The possibility of commission of same nature of crime on the part of this applicant cannot be ruled out. It is a national challenge before our Country. Our young generation is victim of the said crime. The young generation is the real power and future of our country. It is infact cold war with our country, which is opened by our neighbouring country like Pakistan etc. since long back. It is a serious threat to our country. In the State of Punjab most of the young boys are addicted to the narcotic drug etc.. Thus, repetition of happening of such crimes may result in irreparable and heavy damage to our country. It is dangerous threat to our sovereignty. It is to be prevented

by not granting bail to such applicants who are found with huge quantity of cannabis. It is because some time police authority i.e. special units under NDPS Act may not detect and capture each and every persons, who are cleverly committing such crimes against country and society at large. They are also soldiers and expected to be more active, faithful and dedicative for detecting such crimes.

10. Prima-facie the case of this applicant is of commercial quantity. It is ultimately matter of evidence. If any procedure defect is found it to be considered whether it causes prejudice to accused or not. Thus in view of the guidelines of the case law of Hira Singh and Ajay Shriram cited supra on behalf of the APP for the State the applicant is not entitled for bail. It has to be clarified that this Court granted bail in case of Dnyaneshwar Kajle Vs. The State in Bail Application No. 2298 of 2023 decided on 15.01.2024 and Vinod Nagar Vs. Narcotic Bereau, in Bail Application No. 3149 of 2022 decided on 19.02.2024. But that time above case laws were not cited by the learned APP. There is no any prima-facie ground for believing that the applicant is not guilty of the alleged offence as contemplated under Section 37 of the NDPS Act.

11. For the reasons stated above precedential law cited supra on behalf of the applicant is not helpful to him and hence those are not relied upon. The argument of learned Advocate for the applicant is not acceptable in this regard.

12. Considering all these aspects, the application deserves to be rejected. The bail application is rejected.

[SANJAY A. DESHMUKH, J.]

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