

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 997 OF 2024

Rahul Rajesh Jadhav

VERSUS

The State Of Maharashtra And Another

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Advocate for Applicant : Mr. Kale Pratiksha Chhaburao (through V.C.)

APP for Respondents/State : Mr. S.B. Pulkundwar

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CORAM : S.G. MEHARE, J.

DATED : AUGUST 08, 2024

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State.
2. The applicant seeks bail in Crime No.96 of 2024 registered with Gangapur Police Station, District Aurangabad for the offence punishable under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short).
3. It has been alleged against the applicant that the applicant was carrying a gunny back containing narcotic drugs i.e. Ganja on his motorbike. Around 28.6 kg Ganja was recovered from him.
4. The learned counsel for the applicant would submit that Section 52A of the NDPS Act has not been complied with. Therefore, the recovery of the so-called Ganja falls under the shadow of doubt. She prayed for bail.

5. The learned APP would submit that the prosecution may prove the case otherwise. Therefore, non-compliance of Section 52A of the NDPS Act would not entitle the applicant for bail.

6. It is clear from the record that Section 52A of the NDPS Act has not been complied. Section 52A requires that the so-called seized contraband should be produced before the Magistrate for determining the quantity and quality of such contraband. There are series of judgments of the Hon'ble Supreme Court that where Section 52A is not followed, it raises a serious doubt about the truthfulness of the recovery.

7. Recently, the Hon'ble Supreme Court in the case of Simarnjit Singh V/s State of Punjab 2023 (3) Crimes 168 reiterated the same issue on failing to comply with Section 52, the trial may turn in acquittal. The Hon'ble Supreme Court has observed thus :

“Hence, the act of PW-7 of drawing samples from all the packets at the time of seizure is not in conformity with the law laid down by this Court in the case of Mohanlal. This creates a serious doubt about the prosecution's case that substance recovered was a contraband. Hence the case of prosecution is not free from suspicion”.

8. In these circumstances, the quantity may be immaterial. In view of the consistent view of the Hon'ble Supreme Court on Section 52A, the applicant deserve bail. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant, Rahul Rajesh Jadhav, be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount in the above crime, on the conditions that;
 - (a) The applicant shall not tamper with the prosecution witnesses and shall attend the trial on each and every date.

(S.G. MEHARE, J.)