



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

30 BAIL APPLICATION NO. 1145 OF 2024

AMOL MADAN SADAFULE

VERSUS

THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Kakade Amarsinha Shankar.

APP for Respondent-State : Mr. A. S. Shinde.

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CORAM : S. G. MEHARE, J.

DATE : 12.08.2024

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent-State.
2. The applicant seeks bail in Crime No.122 of 2024, registered with Tophkhana Police Station, District Ahmednagar, for the offences punishable under Sections 8(C) and 20(B)(ii) (C) of the N.D.P.S. Act.
3. The prosecution has a case that the police had received the secret information that one person is possessing Ganja for sale. He was storing the Ganja on the first floor of his residence. The police arranged the trap and went to the house of the applicant. The applicant was apprised their intention to search the house. The police find 30 k.g. of green colour ganja

lying in the house. It was recovered. It was seized from the spot of the incident. Then the application under Section 52-A of the NDPS Act was moved and samples were taken before the Magistrate.

4. Learned counsel for the applicant would submit that Section 50 and 52-A of the Act have not been complied with. The flowering and footing tops were not segregated from the seeds and leaves. Therefore, recovery of the commercial quantity is doubtful. He further argued that taking the sample on the spot of the incident soon after the seizure is impermissible in the law. Therefore, Section 37 would not be applicable. Hence, he may be granted bail.

5. Learned APP has vehemently opposed the application. He would submit that in this case, Section 52-A of the NDPS Act has been complied with. The samples have been obtained in presence of the Magistrate. Therefore, the applicant cannot say that Section 52-A has been violated. He would submit that Section 52-A deals with the disposal of the property and not the seizure on the spot of the incident. He also argued that the Hon'ble Supreme Court in the case of *Union of India Vs. Mohanlal and another ; 2016 (2) Crimes (SC) 25* has directed the DDC to take the steps how to stock and destroy under the

supervision of the Head of the concerned Department. Under those directions, the Heads of the Department were granted leave to apply for its disposal under Section 52-A to the Magistrate. Relying on these directions, he has vehemently argued that such a defect can be cured in the mean time. Reading this paragraph, it was a guideline for the disposal of the destruction of the stock lying with various departments. That requires the quick disposal after the seizure by an application to the learned Magistrate. He further relied on the case of ***Mukesh Rajaram Chaudhari Vs. State of Maharashtra ; 2023 All.M.R. (Cri.)3688*** and vehemently argued that taking the samples from the spot of incident is no violation. In this case, the seizure was before the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. Therefore, the Court in paragraph No.16 observed that there was no need to send the samples which were drawn before the Magistrate to the Chemical Analyser, prior to 2022 Rules. Now the rules have cleared the controversy. It has also been observed in paragraph No.15 that as per the new 2022 Rules, now, different procedure is laid down. After seizure, the contraband needs to be produced before the Magistrate and then samples are to be drawn and then sent to the Chemical Analyser. Contention on behalf of the

applicant is earlier lacuna was taken care in Rules. Since the contraband was seized before implementing the Rules 2022, the Court record the findings that compliance under Section 52-A was not violated.

6. In Union of India Vs. Mohanlal (Supra) in paragraph No.20, the Hon'ble Supreme Court has observed that no sooner the seizure of any Narcotic Drugs and Psychotropic and controlled Substances and Conveyances is effected, the same shall be forwarded to the officer in-charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52A(ii) of the Act, which shall be allowed by the Magistrate as soon as may be required under Sub-Section 3 of Section 52A, as discussed by us in the body of this judgment under the heading 'seizure and sampling'. The sampling shall be done under the supervision of the Magistrate as discussed in paras 13 and 14 of this order. Thereafter, Rule 2020 have been framed. Rule 8 speaks of application to Magistrate. This Rule is in the replica of the observations of the Hon'ble Supreme Court in Mohanlal (supra). Rule 9 further provides for drawing the samples in presence of the Magistrate. Reading this Section, in no manner

of doubt it can be said that the samples must be taken before the Magistrate and not before it. By catena of judgments, it has been held that taking the samples on the spot of the incident may not vitiate the trial. But, the accused cannot be convicted.

7. Learned APP is correct in arguing that since the ganja has been recovered from the house, notice under Section 50 is not received.

8. Considering the law laid down and the Rules of the 2022, the Court is of the view that it is the duty of the Investigating Officer to seal the entire contraband recovered on the spot with specific identification marks and he should not draw the samples. He has to immediately forward the seized material to the nearest Officer-In-charge of the nearest Police Station or to the office empowered under Section 53 of the Act and apply to the Magistrate at the earliest under Sub Section (2) of Section 52-A of the Act in Form-5. Rule 9 is about drawing the samples in the presence and under the supervision of the Magistrate. It is clear that no officer seizing the material is authorized to take the samples soon after the seizure on the spot of the incident. That raises the doubt about its purity and

quantity. Rule 10 also provides for the quantity to be drawn for the sample.

9. This Court at Principal Seat Bombay in case of ***Shivaji Gorakh Satpute Vs. State of Maharashtra in Bail Application No.2865 of 2022, dated 15th September, 2023*** relying on the view of Hon'ble Supreme Court in case of ***Simarnjit Singh Vs. State of Punjab in Criminal Appeal No.1443 of 2023*** held that drawing samples from all packets at the time of seizure is not in conformity with the law. The Hon'ble Supreme Court in *Simarnjit Singh* (supra) extracted the findings of the Hon'ble Supreme Court in *Union of India Vs. Mohanlal* (supra) that drawing samples from all the packets at the time of seizure is not in conformity with the law. Reading the judicial pronouncement on this point and Rules 2022, the Court is of the view that the prosecution has not strictly complied with Section 52-A of the NDPS Act. The Supreme Court has observed that the prolonged custody infringes the fundamental right under Article 21 of the Constitution of India and grant of bail on the ground of undue delay in trial is not fettered by Section 37 of the NDPS Act.

10. In view of the above, the Court is of the view that the applicant deserves bail. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant **AMOL MADAN SADAFULE** be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of like amount, on the following conditions :
 - (a) The applicant should not tamper with the prosecution witnesses.
 - (b) He should not involve in the identical crime henceforth.
 - (c) He should attend the trial on each and every date.

(S. G. MEHARE, J.)

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