

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1371 OF 2024

Mirza Mohsin Beg S/o Mirza Nazir Beg

VERSUS

The State Of Maharashtra And Another

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Advocate for Applicant : Mr. Mandlik Pratap Pravin

APP for Respondent/State : Mr. S.P. Sonpawale

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CORAM : S.G. MEHARE, J.

DATED : AUGUST 13, 2024

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State.
2. The applicant seeks bail in Crime No.307 of 2023 registered with Vimantal Police Station, District Nanded for the offences punishable under Sections 20(b)(ii) and 22 of the Narcotic Drugs and Psychotropic Substances Act ('NDPS Act' for short).
3. The applicant was apprehended with Ganja carried in auto-rickshaw of around 71.550 kg. The applicant is languishing in jail since month 2023. There is no progress in the trial.
4. Learned counsel for the applicant would submit that Section 52A of the NDPS Act has not been complied with. The samples were taken from the seized muddemal immediately after the apprehension from the spot of the incident. Therefore, the recovery of the contraband falls under the shadow of doubt. In the

circumstances, the accused may not be convicted. The flowering and fruiting tops were not segregated, therefore, it would be difficult to say that it was a commercial quantity. The procedure laid down for taking samples has not been applied. Therefore, he may be granted bail.

5. Learned APP has strongly opposed the application. He would submit that the Ganja was seized as it is. It was carried in auto-rickshaw in two bags. Taking the samples from the contraband seized from the spot of the incident does not vitiate the trial. The offence is serious. Hence, bail may not be granted.

6. Rule 8, 9 and 10 of the NDPS Rules, 2022 are specific about drawing the samples. The mandate of these Rules and Section 52A of this Act is the police officer should not take the sample soon after the seizure on the spot of the incident. The seizing officer has to send the contraband to the officer authorized under Section 53 of the NDPS Act. Then, he has to apply to the Magistrate for taking samples. The Hon'ble Supreme Court in the case of Simarnjit Singh V/s State of Punjab" 2023 (3) Crimes 168 has laid down the law referring to the case of Union of India v. Mohanlal & Anr, (2016) 3 SCC 379 for drawing the samples on the spot of the incident is not in conformity with the law. The prosecution case may not vitiate but if Section 52A is not complied with, however, the accused cannot be convicted. This law is well settled and followed in many cases. In such

circumstances, Section 37 of the NDPS Act would not come in the way. Repeatedly, the investigation officers are committing the mistake though specific rules with Section 52A have been framed for drawing the samples and procedure thereof by taking samples. There is no record that the flowering and fruiting tops were segregated from leaves, seeds and stems. In the circumstances, for non-compliance of Section 52 strictly, the applicant deserve bail. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant, Mirza Mohsin Beg S/o Mirza Nazir Beg, 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 should not tamper with the prosecution witnesses.
 - (b) The applicant should not leave the place of his residence without the leave of the Trial Court till the trial is concluded.
 - (c) The applicant should furnish his residential proof and cell phone number to the Court with an undertaking that he would change them till the trial is concluded.

(S.G. MEHARE, J.)