



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

933 BAIL APPLICATION NO. 1419 OF 2024

1. Gangabai Pandurang Chavan
2. Shantabai Dattarao Mohite
3. Nirmala Datta MohiteApplicants

VERSUS

The State of Maharashtra & anotherRespondents

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Mr. S. J. Salunke, Advocate for Applicants.

Mr. S. B. Pulkundwar, APP for the State.

CORAM : S. G. MEHARE, J.

DATE : 6th SEPTEMBER, 2024.

PER COURT :

1. Heard learned counsel for the Applicants and learned APP for the State.

2. Applicants seek bail in Crime No. 0019/2024 registered with Dharur Police Station, District Beed, for the offences punishable under Section 20-B of the Narcotic Drugs and Psychotropic Substances Act.

3. On secret information, police led a trap and intercepted the vehicle in which the Applicants were travelling. Notice under Section 50(1) of Narcotic Drugs and Psychotropic Substances Act was served upon the Applicants for their physical search. They were physically searched but no drugs or other incriminating evidence was found on their person. Then, police took search of the vehicle and found that the bags containing green leaves. The police seized the bags and drew sample from each bag on the spot of the incident.

4. The question has raised from time to time, whether drawing these samples on the spot of the incident is allowed and what is its effect.

5. Section 52A of the Act provides for inventory to be drawn by the Magistrate on the Application by the concerned officer. The Magistrate may be requested to certify the correctness of the inventory so prepared. The officer after certifying the correctness of the inventory, may allow to draw representative samples of such drugs or substances in his presence and certify the correctness of list of samples drawn.

6. It is the argument of learned APP that Section 52A(2) of the Act does not prohibit taking the samples from the contraband on the spot of the incident. Such samples are taken just to identify the nature of the drugs or the narcotic substances. So taking samples on the spot of the incident is not bad in law.

7. Learned counsel for the Applicants submits that taking samples from the spot of the incident raises a serious doubt about the veracity of the samples.

8. Recently in the year 2022, the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022, were framed to remove the anomaly in the procedure and practice to be followed regarding the seizure, storage, samples and disposal of the narcotic drugs. Rule 8 thereof provides for an application to the Magistrate. Section 52A(2) provides that soon after the seizure of the contraband, it must be forwarded to the nearest officer in-charge of the police station or the officer appointed under Section 53 of the Act. The concerned in-charge officer or the officer appointed under Section 53 of the Act shall prepare an inventory of such material in the prescribed form and apply to the Magistrate at

the earliest as provided under Section 52A(2) of the Act in Form No.

5. Rule 9 is very specific about drawing samples. It provides that after an application to the Magistrate, the Investigating Officer shall ensure that the samples of the seized material are drawn in the presence of the Magistrate. Rule 10 speaks of samples. Rule 11 speaks of quantity of samples to be drawn.

9. The Hon'ble Supreme Court in the case of Mukesh Rajaram Choudhari Vs. State of Maharashtra, **LAW(BOM) 2023-9-405** has referred to Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules 2022 and observed that 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 sent to the Chemical Analyser. The Hon'ble Supreme Court in the case of Simranjit Singh @ Roda vs. State of Punjab, **2023 LiveLaw SC (570)**, refused to accept the evidence of drawing samples on the spot and conviction was set aside.

10. It is clear from the pronouncement of the Hon'ble Supreme Court in the case of Simranjit Singh (supra) that drawing

samples on the spot of the incident raises a serious doubt and the accused cannot be convicted.

11. The rules referred to above are specific about the practice and procedure for taking samples. Those rules bind the Investigating Officer.

12. In view of the above, this Court is of the view that taking samples on the spot of the incident raises a serious doubt and such person cannot be convicted. The rider of Section 37 of the Act would not come in the way of the Applicants though learned APP has strongly relied on that section. The arguments of learned APP as mentioned above are regarding the procedure after the contraband is produced before the Magistrate.

13. There appears a legal defect in seizure which goes to the roots of the matter. Therefore, this Court is of the view that the Applicants deserve bail. Hence, the following order :-

ORDER

- (i) Bail Application is allowed.

(ii) Applicants Gangabai Pandurang Chavan, Shantabai Dattarao Mohite and Nirmala Datta Mohite, be released on furnishing P.B. and S.B. of Rs. 50,000/- each (Rs. Fifty Thousand only) with solvent surety each of the like amount in connection with Crime No. 0019/2024 for the above offence, on following conditions :-

- (a) They should not involve in the identical offences.
- (b) They should attend the trial on each and every date.
- (c) They should furnish their residential proof with cell phone number to the learned Trial Court with an undertaking that they would not change it till the conclusion of the trial.

(S. G. MEHARE)
Judge