



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1219 OF 2023

Shaikh Aslam Shaikh Ismaile alias Aslambaba ...Applicant
Ganjawala

Versus

The State of Maharashtra & Anr. ...Respondent

Mr. Santosh T. Pandey (through Video Conference) a/w. Ms. Kajal Upadhyay, Ms. Anima Mishra and Mr. Anuj Singh i/b. SBG Laws, Advocates, for the Applicant.

Mr. Shriram S. Chaudhari, APP, for the Respondent-State.

Mr. Sujit Surendra Patil, P.S.I., Malegaon Taluka Police Station present.

CORAM: MADHAV J. JAMDAR, J.

DATED : 20th MARCH 2024

PC:-

1. Heard Mr. Pandey, learned Counsel for the Applicant and Mr. Chaudhari, learned APP for the Respondent-State.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1.	C. R. No.	341 of 2022
2.	Date of registration of F.I.R.	15/06/2022
3.	Name of Police Station	Malegaon Taluka Police Station, District-Nashik

4.	Section/s invoked in F.I.R.	22(c), 20, 29 and 25 of the NDPS Act, 1985
5.	Section/s invoked in Charge-sheet	8(a), 20(a), 22(a), 25 and 29 of the NDPS Act, 1985
6.	Date of incident	14/06/2022
7.	Date of arrest	19/08/2022
8.	Date of filing of Charge-sheet	21/10/2022

3. As per the prosecution case, the Police officials received information on 14th June 2022. The police officials went to the room situated in agricultural field owned by Gurunanak Bhagwan Temple Trust, Tokde for searching the Accused persons of another C.R. No.63 of 2022 registered under Section 307 read with 34 of the Indian Penal Code, 1860. At that time, Accused Nos.1 and 2 were found. In the said room, police found 17 plastic gunny bags containing Ganja. The quantity of said Ganja was 480 kgs 910 grams. The said room belong to the said Trust and Accused No.1 is a trustee of the said Trust. The Accused Nos. 1 and 2 informed the police officials that said Ganja belonged to the present Applicant i.e. Accused No.3 and that it was given to them for storing in the said room. As per the prosecution case, the said Ganja was to be given to Accused No.4 who is the absconding Accused. There are

about 56 phone calls between the present Applicant i.e. Accused No.3 and Accused No.4 from 10th April 2022 to 14th June 2022.

4. Mr. Pandey, learned Counsel for the Applicant submitted that as per the prosecution case, there are only two circumstances against the present Applicant that the Accused Nos.1 and 2 informed that said Ganja belongs to the Applicant and that there are 56 phone calls between the present Applicant and the Accused No.4. He submitted that there is no role attributed to the said Accused No.4. He further submitted that there is no material on record to show that the cell phone number from which the calls were made between the present Applicant and the Accused No.4 belongs to the Applicant. He submitted that there is no other evidence except the statement of Accused Nos.1 and 2 that the said Ganja belongs to the Applicant.

5. Mr. Pandey, learned Counsel for the Applicant submitted that there is one more case in which F.I.R. contains the same allegation and the learned Sessions Judge has granted Anticipatory Bail. He pointed out said Order dated 12th July 2016 passed by a learned Additional Sessions Judge, Malegaon below Exhibit-1 in Criminal

Bail Application No.295 of 2016. Paragraph No.5 of the same reads as under:-

“5. From perusal of first information report, it transpires that, name of applicant is stated by co-accused Muzakir Zakir Mansuri, and except that, there is no material against the applicant at this moment. Moreover, it is not appropriate at this stage to comment upon the merits of the case, and thus, without commenting upon the merits, I am of the considered view that the applicant scrupulously followed the conditions and appeared before the Investigating Officer. Thus, he has not abused the liberty granted to him vide interim order dated 05.07.2016. In addition thereto, the applicant associated himself, with the investigation. Hence, I pass the following order.....”

6. Apart from that, Mr. Pandey, learned Counsel for the Applicant pointed out another Order dated 8th April 2022 passed by a learned Additional Sessions Judge, Malegaon in Criminal Bail Application No.132 of 2022 and particularly paragraph No.6 of the said order, which reads as under:-

“06] Perused the charge-sheet. It appears that the investigation is completed. Charge-sheet is filed. As mentioned supra, charge sheet does not contain the confession statement made by the co-accused to show that applicant/accused is the owner of the seized Cannabis. It is admitted fact that accused were not found with any Cannabis. Charge-sheet is totally silent about the ownership of Cannabis. The

police remand of accused No.1 and 2 was extended on request of prosecution on the ground of collecting the evidence regarding the ownership of Cannabis. However, it appears that there is no any single document in the charge-sheet, which shows that the applicant/accused is the owner of the said Cannabis. Learned A.P.P. and I.O. submitted that it is a secret information to the police that applicant/accused is the owner of the said Cannabis, however, no such document is filed on record. Under such circumstance, I am of the opinion that applicant/accused is entitled for bail. In result, I pass the following order.....”

7. He submitted that as far as the antecedents are concerned, the Applicant is acquitted in some of the cases. He submitted that most of the cases are not under the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS”) and the Applicant has already been granted bail in those cases.

8. On the other hand, Mr. Chaudhari, learned APP for the Respondent-State strongly opposed the Bail Application. He submitted that the Accused Nos. 1 and 2 informed the police that the said Ganja belongs to the Applicant and there are 56 phone calls made between the present Applicant and the Accused No.4 in the crucial period of 10th April 2022 to 14th June 2022. He therefore, submitted that there is incriminating material against the present Applicant. He submitted that there are 7 antecedents

against the present Applicant and therefore the bar under Section 37 of the NDPS Act is attracted.

9. Perusal of the record shows that in the present case, the incident in question occurred on 14th June 2022, F.I.R. was lodged on 15th June 2022, the Applicant was arrested on 19th August 2022 and, Charge-sheet was filed on 21st October 2022. There is no progress in the trial and even the charge is also not framed yet. As per the Charge-sheet, there are 25 witnesses proposed to be examined by the prosecution. The trial is unlikely to conclude any time soon and is likely to take a considerably long time.

10. *Prima facie* there is substance in the contention of Mr. Pandey, learned Counsel for the Applicant that except the statement of Accused Nos. 1 and 2 that the Ganja in question belongs to the Applicant, there is no other evidence to substantiate the said contention.

11. Perusal of the record shows that the material against the Applicant is the 56 phone calls between the present Applicant and the Accused No.4. However, no role is attributed to the Accused

No.4 in the Charge-sheet who is the absconding Accused. Except the phone calls between the present Applicant and the Accused No.4, no material is pointed out connecting Accused No.4 to the crime.

12. As far as criminal antecedents are concerned, the details are as follows:-

Sr. No.	Police Station	C.R. No.	Sections invoked	Present Status
1	Malegaon City	132/2020	324, 323, 504, 506, 143, 144, 147, 427, 160, 188, 269, 270 of the I.P.C., 1860 3, 4 and 25 of the Arms Act, 1959	Pending in Court
2	Malegaon City	108/2020	324, 323, 504, 506 r/w. 34 of the I.P.C., 1860	Pending in Court
3	Ramzanpura	II03/2020	12A of the Maharashtra Prevention of Gambling Act, 1887	Pending in Court
4	Azadnagar	II98/2017	12A of the Maharashtra Prevention of Gambling Act, 1887	Pending in Court
5	Azadnagar	155/2019	324, 323, 326, 504, 504 r/w. 34 of the I.P.C., 1860	Pending in Court
6	Azadnagar	137/2016	20(b) and 22(c) of the NDPS Act	Pending in Court
7	Azadnagar	I 06/2017	326, 504, 506 r/w. 34 of the I.P.C., 1860	Pending in Court

It is clear that 4 antecedents are inter alia under Sections 324, 323, 326, 504 of the Indian Penal Code, 1860 ("I.P.C."). Two antecedents are under *the Maharashtra Prevention of Gambling Act, 1887* and one is under the NDPS Act. As far as the antecedent under the NDPS Act are concerned, the Applicant has already been granted bail therein. The reasons recorded by learned Additional Sessions Judge, Malegaon in paragraph No.5 of the Order dated 12th July 2016 are already set out hereinabove.

13. The reasons recorded hereinabove clearly show that the bar under Section 37 of the NDPS Act will not apply to this case.

14. However, Mr. Chaudhari, learned APP pointed out that there is an externment Order dated 28th September 2021 passed by the Sub-Divisional Magistrate, Malegaon Sub-Division, District-Nashik by which the Applicant has been externed from Nashik district. He submitted that therefore, if this Court is inclined to grant bail then the Applicant be directed to stay outside the Nashik district. Mr. Pandey learned Counsel appearing for the Applicant on instructions states that as most of the offences are registered in district Nashik, the Applicant will therefore not reside within

District-Nashik and that the Applicant will reside at the residence of his brother-Shaikh Azmal Shaikh Ismail at 80 footi Road, Baba Nagar, Dhule.

15. The Applicant does not appear to be at risk of flight.

16. Accordingly, the Applicant can be enlarged on bail by imposing conditions.

17. In view thereof, the following order:-

ORDER

(a) The Applicant – Shaikh Aslam Shaikh Ismaile *alias* Aslambaba Ganjawala be released on bail in connection with C.R. No.341 of 2022 registered with the Malegaon Taluka Police Station, Taluka - Malegaon, District - Nashik on his furnishing PR. Bond of Rs.50,000/- with one or two local solvent sureties in the like amount.

(b) The Applicant shall not enter the Nashik district after

being released on bail, except for reporting to the Investigating Officer, if called, and for attending the trial.

- (c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (d) The Applicant shall report to the Dhule City Police Station, District - Dhule twice a week, on every Monday and Thursday between 11.00 a.m. and 1.00 p.m. for six months and thereafter once a week on every Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Dhule City Police Station, District – Dhule to communicate details thereof to the Investigating Officer.
- (e) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person

acquainted with the facts of the case so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.

(f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.

(g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

18. The Bail Application is disposed of accordingly.

19. It is clarified that the observations made herein are *prima facie*, and the Trial Court shall decide the case on its merits uninfluenced by the observations made in this order.

[MADHAV J. JAMDAR, J.]