

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Bail Application No. 2734 of 2022

Vijaykumar Suryaman Patel
r/at H.No.97, Lokipur,
Kharariya Khas, P.S. Badagaon,
Taluka Pindra, Varansai.
Central Jail, Kalyan

... **Applicant**

v/s.

State of Maharashtra
through Mahatma Phule Police Station,
Kalyan, Thane.

... **Respondent**

Ms Ashwini Achari i/b. Taraq Sayed, for the applicant.
Mr. A.A. Palkar, APP for the State.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED : 27th March 2024

PRONOUNCED ON : 28th March 2024

ORDER :

By this application, the applicant seeks his release on bail who is being prosecuted by Mahatma Phule Police Station, Kalyan in connection with Crime No.145/2021 for the offences punishable under Sections 8(c), 20(c) and 29 of the Narcotic Drugs and Psychotropic Act, 1985 (for short “**N.D.P.S. Act**”).

2. The prosecution story in brief goes as follows:

3. On 3rd March 2021 around 21 hours police Naik Suchit Thikekar who was posted at Mahatma Phule police Station, Kalyan received a secret information that one red colour Toyota Qualis car being registration No.MH-04-BK-4067 would be transporting cannabis i.e. Ganja from Surat, Gujarat which would be delivered to someone at Indira Nagar, near Public toilet, Birla College, Kalyan. The said information was written down. A raiding team was formed comprising certain police officers *inter alia* two persons who are summoned to act as panch witnesses namely Diptesh P. Bhombe and Dilip P.Suradkar. The raiding team was equipped with all the necessary things required for conducting the raid namely laptop, printer, seal bag etc. As per the information, the said red colour Toyota Qualis car was noticed by the team. When the said car reached near Akshata Restaurant and Bar, it was intercepted by the members of the raiding team. The person in the said car was nabbed when he was about to escape. Upon being asked he informed his name as Vijaykumar S. Patel (the Applicant herein), resident of Sion Gaon, Taluka Olpad, Dist. Surat. The applicant was informed about his right under Section 50 of the N.D.P.S. Act to be searched in the presence of the Gazetted Officer or Magistrate. The applicant declined to get himself searched before any officer or Gazetted officer. Later on during the search of the qualis car, the team noticed 4 different bags containing contraband; (i) Ganja weighing about 30930 kg., (ii) 19500 kg. (iii) 27230 kg. and (iv) 21280 kg. Respectively. The total contraband weighed around 98.94 gms. 50

gms of samples, each from the said bags, were taken out in the presence of panch witnesses. The samples were duly sealed by use of the sealing wax and by obtaining the signatures of the panch witnesses. Rest of the muddemal was again re-packed in the said plastic bags which were subsequently sealed.

4. The Investigating Officer recorded statement of the witnesses and after completing the formalities, lodged an FIR against the applicant. The samples were sent to Forensic Science Laboratory for chemical analysis. After the investigation, a chargesheet is filed against the applicant.

5. The application for bail moved by the applicant before the trial Court came to be rejected by an order dated 4th April 2022 on the ground that what had been seized by the respondent was a commercial quantity of contraband. The trial Court discarded the applicant's plea that he had no role to play in transporting the contraband save and except a bonafide helper to the driver of the said vehicle.

6. Heard Ms. Ashwini Achari for the applicant and Mr Palkar, the learned APP appearing for the State, at length.

7. At the outset, Ms. Achari has invited my attention to the panchnama by contending that the investigating officer has not

followed the mandate of Section 52-A of the N.D.P.S. Act since the contraband which was seized at the scene of occurrence has not been taken immediately to the Jurisdictional Magistrate for taking out samples and for preparing an Inventory which is against the law laid down by the Supreme Court in various pronouncements, more particularly, in case of *Union of India v/s. Mohan Lal & anr.*¹ as well as in case of *Simrnjit Singh v/s. State of Punjab*². The learned Counsel would also place reliance on a latest judgment of the Supreme Court in the case of *Mohammed Khalid & anr. v/s. State of Telangana*³. Even the C.A. report indicates that what had been forwarded to the Forensic Science Laboratory is flowering/fruiting tops with greenish brownish coloured leaves, seeds and stalks, put in a zip lock polythene bag. All the Exhibits 1 to 3 have the same description which cannot be said to be Ganja as contemplated in Section 2(iii) (b) of the N.D.P.S. act which defines Ganja as;

“2(iii)(b)- ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and”

8. Per contra, Mr. Palkar is fair enough to admit that there is non-compliance of Section 52-A of the N.D.P.S. Act.

1 (2016) 3 SCC 379

2 2023 SCC Online SC 906

3 Cr. Appeal No(s).1610/23 and 1611/23

9. A bare look at the seizure panchnama clearly indicates non-compliance of Section 52-A of the N.D.P.S. Act. It is not even the case of the prosecution that even subsequent to forwarding the contraband to the Forensic Science Laboratory, there was due compliance of Section 52-A. This frustrates the very object of Section 52-A of the Act as has been enunciated by the Supreme Court in the case of *Union of India v/s Mohan Lal and in the case of Simrnjeet vs. State of Punjab* (supra).

10. It is needless to reiterate even the latest observations of the Supreme Court in the case of the *Mohammed Khalid & anr.* (supra) when the Supreme Court while hearing an appeal against concurrent judgments of the trial Court as well as the High Court of Telangana made following observations;

“22. Admittedly, no proceedings under Section 52A of the NDPS Act were undertaken by the Investigating Officer PW-5 for preparing an inventory and obtaining samples in presence of the Jurisdictional Magistrate. In this view of the matter, the FSL report (Exhibit P-11) is nothing but a waste paper and cannot be read in evidence. The accused A-3 and A-4 were not arrested at the spot. The offence under Section 20(b)(ii)(c) deals with production, manufacture, possession, sale, purchase, transport, import or export of cannabis. It is not the case of the prosecution

that the accused A-3 and A-4 were found in possession of ganja. The highest case of the prosecution which too is not substantiated by any admissible or tangible evidence is that these two accused had conspired sale/purchase of ganja with A-1 and A-2. The entire case of the prosecution as against these two accused is based on the interrogation notes of A-1 and A-2”.

11. There are no antecedents *qua* the applicant. Ever since his arrest on 4th March 2021 he has been behind the bars. The charge has yet not been framed. The chances of trial getting concluded in near future are bleak.

12. Insofar as rigours of Section 37 of the N.D.P.S. Act are concerned, certain restrictions have been placed on the powers of this Court while granting bail to a person accused of having committed an offence under the N.D.P.S. Act. Of course, the limitations on granting of bail specified in clause (b) of sub-section (1) are, in addition to the limitation of the Code of Criminal Procedure.

13. Nevertheless, having granted an opportunity to the prosecution to oppose the application, which has not been seriously contested by it and having considered the aforesaid facts there are reasonable grounds for believing that the applicant is not guilty of

such offence and is not likely to commit an offence while on bail. This is more particularly in the light of the fact that even the other material on record does not reveal that the applicant was in conscious possession of the contraband which was being transported in the said vehicle. The record also does not reveal whether search of the applicant was conducted under Section 50 of the N.D.P.S. Act despite there being a mention about it in the panchnama.

14. To conclude, I am convinced that this is a fit case to enlarge the applicant on bail. The findings recorded herein above are not in the context of finding the applicant not guilty of the offence or whether the applicant has, in fact, committed or not any offence under the N.D.P.S. Act. The entire exercise is only for the purpose of considering whether he can be enlarged on bail or otherwise.

15. Consequently, I proceed to pass the following order:

ORDER

- (a) The application is allowed.
- (b) The applicant – Vijaykumar Suryaman Patel be released on executing a PR bond in the sum of Rs.30,000/- with one or two sureties in the like amount to the satisfaction of the Special Judge, Additional Sessions Court, Kalyan in the Case

No.192/2021 for the offences punishable under Sections 8(c),20(c) and 29 of the N.D.P.S. Act.

(c) The applicant shall report the concerned police station on first Sunday of each month between 10.00 a.m.to 1.00 p.m. till the charge is framed.

(d) After framing the charge, applicant shall attend the trial Court on each date unless exempted from appearance;

(e) The applicant shall not tamper with the evidence or attempt to influence or contact any of the witnesses or persons concerned with this case;

(f) The applicant shall surrender his passport, if any, to the Investigating Officer immediately after the release.

(g) The applicant shall furnish his residential address and contact details to the respondent as well as to the Trial Court immediately after his release. In case of change in contact details or residential address, same shall be forthwith informed to the Trial Court and the Respondent.

(h) In case of breach of any of the conditions hereinabove, liberty to the prosecution to seek cancellation of bail of the applicant.

16. The application stands disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J)

Lata Panjwani, P.S.