

Shailaja

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

CRIMINAL BAIL APPLICATION NO. 2956 OF 2022

Sandip @ Pappu @ Ravindra Shivaji]
Nilkanth] **Applicant**

Vs.
The State of Maharashtra] **Respondent**

.....
Mr. Taraq Sayed a/w Ms. Ashwini Achari, for the Applicant.

Mr. A.A. Palkar, APP for Respondent – State.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 8th MARCH, 2024.

P.C.

1. Applicant prays for his release on bail, who is being prosecuted by Kalwa Police Station in connection with C.R. No. II - 309 of 2021 dated 13th September, 2021 for the offences punishable under Sections 8 (c), 20 (C), 22, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “N.D.P.S Act”).

2. Briefly stated, on 13th September, 2021, pursuant to an information that a person by name Abhishek Jagdale would be

arriving near Kharegaon Toll Naka in an Auto Rickshaw bearing No. MH 04 KA 4568 for the purpose of of selling contraband i.e Ganja, a raid was conducted and said Auto Rickshaw was accosted. During search of the said Auto Rickshaw, 21.850 kgs of Ganja was recovered from accused No.1 and 22.165 kgs Ganja was recovered from accused No.2. After investigation, a charge-sheet was filed.

3. I heard Mr. Taraq Sayed, learned Counsel for the applicant and Mr. Palkar, learned A.P.P, for respondent – State.

4. Mr. Taraq Sayed invites my attention to a fact that the main accused – Abhishek Jagdale had already been enlarged on bail by the Special Court on 12th January, 2024. Copy of the said order is placed on record. It appears that the trial Court granted bail to the co-accused on the ground of discrepancies found in the weight of the alleged contraband which was seized at two different places and that there was increase in the weight of Ganja after lapse of time. It seems that the trial Court also had a doubt as to whether seized material can be said to be “Ganja” as defined in Section 2 (iii) (b) of the N.D.PS Act which, essentially consists of flowering of fruiting tops of the cannabis plant (excluding the seeds and leaves when not

accompanied by the tops). When the seeds and leaves are accompanied then it would fall within the definition of “Ganja”.

5. Mr. Palkar, the learned A.P.P opposes the application for bail mainly on the ground that the applicant was the supplier of the contraband. Admittedly, the contraband in the present case has not been seized from the possession of the accused. My attention is invited by Mr. Palkar to a Memorandum Statement of accused – Abhishek Jagdale who had named the applicant as a person who supplied two gunny bags of Ganja to the said accused which was brought by him in a Innova Car. It is not the case of the prosecution that Innova Car belongs to the applicant. Even otherwise, a statement under Section 27 of the Evidence Act cannot be considered as a inculpatory statement of the accused confessing his guilt, that too, in respect of co-accused.

6. Apart from the ground of parity, the trial has not yet commenced. The applicant, therefore, deserves to be released on bail. Hence, the following order.

:O R D E R:

(i) The applicant - Sandip @ Pappu @ Ravindra Shivaji Nilkanth be released on bail in connection with C.R. No. II-309/2021, registered with Kalwa Police Station under Sections 8(c), 20(C), 22 & 29 of the NDPS Act upon executing a P.R. bond in the sum of Rs.1,00,000/- with one or two local sureties in the like amount to the satisfaction of the trial Court.

(ii) The applicant shall attend the Investigating Officer of Kalwa Police Station once in a month on first Monday between 11.00 a.m. and 1.00 p.m.

(iii) 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 him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(iv) On being released on bail, the applicant shall furnish his contact number and residential address to the

Investigating Officer and shall keep him updated, in case there is any change.

(v) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(vi) The applicant shall surrender his passport, if any, to the investigating officer of the concerned Police Station.

(vii) The applicant shall not indulge into similar activities and repeat the offence while on bail. It is made clear that if the applicant is found indulging in similar offences or any other offence in future, it is open for the prosecution to apply for cancellation of bail.

(viii) The applicant shall furnish documents regarding his present residential address along with details and documents of his two relatives and native place, address before the Court at the time of furnishing P.R. bond and to submit the same to the Investigating Officer.

(ix) The applicant shall surrender his passport, if any.

7. The application is disposed of in the above terms.

(PRITHVIRAJ K. CHAVAN, J.)