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Uday S. Jagtap

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

**CRIMINAL BAIL APPLICATION NO. 3641 OF 2022**

Sanjat Ratan Rajput

.. Applicant

Vs.

Union of India & Anr.

.. Respondents

.....

Mr. Taraq Sayed i/b Advait Tamhankar for the applicant

Mr. M.G. Patil, APP for the respondent – State

Mr. Amit Munde, Spl. P.P. for the respondent no.1 - Customs

.....

**CORAM : PRITHVIRAJ K. CHAVAN, J.**

**RESERVED ON : 9<sup>th</sup> JANUARY, 2024**

**PRONOUNCED ON : 10<sup>th</sup> JANUARY, 2024**

**P.C.**

1. By this application, the applicant prays for his release on bail under Section 439 of the Code of Criminal Procedure since he has been arrested and prosecuted for the offences punishable under Section 8(c), r/w Section 20b(ii)(C) and Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”).

2. Shorn of unnecessary details, a few facts germane for disposal

of this application can be summarized as under.

3. Pursuant to an information by the respondent, a car bearing Registration No. MH-05-AX-6577 was intercepted on Nashik Phata, Pune around 10.00 hours to 12.00 hours on 26.07.2018. During search, it was found that the car was loaded with approximately 200 kgs of *Ganja*, which was a contraband. After weighing, it was noticed that the quantity was around 180.320 kgs. Necessary sampling, sealing and labeling was carried out by the Investigating Agency as also the personal search of the applicant. Statement under Section 67 of the NDPS Act came to be recorded. There are two accused. After investigation, a charge-sheet is filed in the Special Court.

4. First application for bail preferred by the applicant came to be rejected by the Special Court vide order dated 02.01.2020.

5. At the outset, learned Counsel for the applicant invited my attention to the fact that the applicant has been incarcerated for more than 5 years, who is the only earning member of his family and there is no likelihood of concluding the trial in near future. He may be released on bail by imposing the conditions to which he

would abide by. Learned Counsel has also advanced few submissions on the merits of the case by stating that definition of contraband as given in the panchanama, does not match to that of the definition of *Ganja*, as envisaged under the NDPS Act. To substantiate his contention, he placed reliance on the order of this Court bench at Aurangabad, dated 30.11.2021 (Bail Application No.1329 of 2021). It is also submitted that in view of the various pronouncements of this Court on identical facts, the applicants have been enlarged on bail.

6. *Per contra*, learned Special Public Prosecutor while strongly objecting the release of the applicant on bail, contended that looking to the enormity of the offences, in the sense, it being a commercial quantity of *Ganja* seized from the possession of the applicant and as the trial has already commenced, the applicant may not be released on bail. It is further contended that this is essentially an offence against the Society having impact on the health of the citizens and, therefore, the applicant may not be released.

7. The learned Special Public Prosecutor expressed his

apprehension of abscondence of the applicant in case of his release as well as influencing and coercing the prosecution witnesses, especially the panchas. He also expressed his apprehension of repeating similar offence by the applicant in case of his release.

8. Admittedly, the applicant has been incarcerated for nearly 5 years. Though the trial has already commenced, the learned Special Public Prosecutor submits that a direction be issued to expedite the trial, which would be concluded within a period of one year.

9. Section 20b(ii)(C) of the NDPS Act provides minimum imprisonment of 10 years in case of commercial quantity of cannabis, which may extend to 20 years. Even if the minimum sentence of 10 years is taken into consideration, the applicant has already undergone half of the sentence. At the same time, it cannot be lost sight of the fact that that prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution of India and in such an eventuality, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act. This has been precisely observed by the Hon'ble Supreme Court in the

case of *Rabi Prakash Vs. The State of Odisha (Special Leave to Appeal (Cri.) No(s).4169 of 2023)*.

10. The learned Counsel for the applicant has pressed into service a latest order of the Supreme Court in the case of *Jitendra Jain Vs. NCB & Anr. (Special Leave to Appeal (Cri.) No. 8900 of 2022)*.

It was a case under Section 8 r/w Sections 20(b)(ii)B, 27, 27A and 29 of the NDPS Act registered with Narcotics Control Bureau, Mumbai Zonal Unit, Mumbai. It is observed that though it is a case of commercial quantity and allegations levelled against the petitioner are serious in nature, but having regard to the fact that he is in custody for 2 years and conclusion of the trial will take time, the Supreme Court released the petitioner on bail. The instant case is on much higher footing than what the Supreme Court has observed in the case of Jitendra Jain (supra).

11. This Court has also taken a similar view while granting bail to the applicant in case of *Sajjid Yusuf Electricwalla Vs. The State of Maharashtra (Bail Application No.3076 of 2021)* dated 31.03.2022.

12. The Special Public Prosecutor, on the other hand, placed

reliance upon a judgment of the Supreme Court in the case of *Narcotics Control Bureau Vs. Mohit Agarwal, 2022 SCC Online SC 891* wherein it has been observed that parameters of bail available under Section 37 of the Act were not satisfied. The accused in the said case was in the custody for less than 2 years. In such circumstances, it was observed that the length of period of his custody and the fact that charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act. The ratio laid down in case of Mohit Agarwal (supra) can be distinguished in view of the order of the Supreme Court in case of Jitendra Jain (supra) as well as in case of Rabi Prakash (supra).

13. *Dehors* of the merits of the case and in view of various pronouncements referred to hereinabove, I am persuaded to release the applicant on bail *albeit* imposing certain conditions, which would take care of the apprehension expressed by the learned Special Public Prosecutor.

14. Consequently, the following order is expedient :-

## ORDER

- (i) The application is allowed.
- (ii) The applicant – Sanjay Ratan Rajput be released on executing a PR bond in the sum of Rs.50,000/- with two local sureties in the like amount to the satisfaction of the Special Judge of NDPS Court in Special Case No.8 of 2019.
- (iii) The applicant shall appear before the respondent – Investigating Officer on every Monday between 9.00 a.m. to 11.00 a.m. till the conclusion of the trial.
- (iv) The applicant shall surrender his passport with the Investigating Officer. In case, he has no passport, an affidavit be sworn before the Special Court within two weeks from today.
- (v) The applicant shall not leave the jurisdiction of the Special Court until conclusion of the trial.
- (vi) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of case so as to

dissuade him from disclosing the facts to Court or any Police Officer. The applicant should not tamper with evidence.

(vii) The applicant shall furnish his cell number as well as residential address to the Investigating Officer and shall also inform if there is any change in the Cell number or the residential address.

(viii) Needless to say that breach of any of the condition would entitle the prosecution to pray for cancellation of the bail.

15. The application is disposed of in the aforesaid terms.

**(PRITHVIRAJ K. CHAVAN, J.)**