

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3629 OF 2023

Shafik Sattar Shah

...Applicant

Versus

State Of Maharashtra

...Respondent

Mr. Akshay Bankapur, Advocate for Applicant.

Mr. Arfan Sait, APP for Respondent-State.

API Dharmraj Bangar, Nashik City is present.

CORAM : PRAKASH D. NAIK, J.

DATE : 22nd JANUARY, 2024

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1. This is the second application for bail in C.R. No.I-239 of 2020 registered with Mumbai Naka Police Station, Nashik for offence under Sections 8(C), 20(C) and 29 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (for short "NDPS Act"). The previous application for bail was rejected vide order dated 19th December 2022.

2. The case of prosecution is as follows:-

On 17th June 2021 information was received that two persons aged around 30 to 35 years are likely to come in vehicle bearing No. MH-02-1544 carrying 40 to 50 kgs of Ganja for the purpose of sale on 18th June 2020. The information was recorded. The information was forwarded to Assistant Commissoenr of Police vide written letter and directions were

issued for conducting raid. Panchas were arranged. The raiding party proceeded to the spot. The vehicle bearing No. MH-02-CD-1544 was intercepted. Two persons were found in the vehicle. They gave their names as Shafik Sattar Shah and Gayasoddin Niyajoddin Shaikh. They were apprised of their rights u/s. 50 of NDPS Act. Written letter was issued to them in that regard. Search was conducted. During search of vehicle white plastic bag was found. On opening the bag it was noticed that there were about 14 packets in the bag. They were opened. The inmates of the vehicles informed that it was Ganja. The total weight of the contraband was 40.500 kgs. The value of the contraband was around Rs.11,32,400/-. The contraband was kept in a bag. Samples were taken. On completing investigation charge sheet was filed.

3. Learned Advocate for applicant submitted that, the applicant is in custody from 18th June 2020. Although, he is under incarceration for three and half years, there is no progress in the trial. The panchnama and the report of Regional Forensic Laboratory reveal that, description of the articles contained in parcel mentions that, the same is flowering/fruited tops with greenish coloured leaves, seeds and stalks, put in a packet. Ganga is the flowering or fruited tops of the cannabis plant excluding the seeds and leaves when not accompanied by the tops. The chemical analysis report mention that exhibit contained flowering/fruited tops with greenish coloured leaves, seeds and stalks. The entire contraband was weighed for

the purpose of determining the contraband as commercial quantity. Co-accused Gayashouddin Niyajuddin Shaikh has been granted bail by this Court vide order dated 11th October 2023 on the aforesaid discrepancies. The applicant cannot be detained in custody for indefinite period.

4. On the point of delay in trial and long incarceration in custody, the learned Advocate for applicant has relied upon the following decisions:-

- (i) Union of India Vs. Ajay Kumar Singh alias Pappu¹
- (ii) Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)²
- (iii) Union of India Vs. K. A. Najeeb³
- (iv) The decisions of this Court in the case of **Ibrahim Khwaja Miya Sayyed @ Raju Vs. The State of Maharashtra** delivered in Bail Application No. 1296 of 2022 decided on 17th March 2023;
- (v) **Suresh Maruti Pawar Vs. The State of Maharashtra** delivered in Bail Application No. 1599 of 2020 decided on 17th November 2021;
- (vi) **Laxman Shankar Ghankute Vs. The State of Maharashtra** delivered in Criminal Bail Application No.2583 of 2019 decided on 23rd June 2021;
- (vii) **Hari Mahadu Valse Vs. The State of Maharashtra** delivered in Bail Application No.2299 of 2019 decided on 29th July 2021 and
- (viii) **Ganesh Prakash Golesar Vs. State of Maharashtra** delivered in Bail Application No. 2469 of 2023 decided on 7th October 2023.

1 2023 SCC OnLine SC 346

2 AIR 2023 SC 1648

3 AIR 2021 SC 712

5. Learned APP submitted that, offence is of serious nature. The accused were found in possession of 40 kg Ganja. The discrepancy urged by applicant is required to be adjudicated during trial. The previous application for applicant was rejected by this Court vide order dated 19th December 2022. The grounds urged by applicant with regard to the discrepancies in the confiscation was considered by this Court. The previous order of rejection of bail qua applicant was not placed before the co-ordinate Bench. While granting bail to the co-accused vide subsequent order dated 11th October 2022. Section 37 of the NDPS Act is required to be looked into while considering grant of bail. Charge is framed. The prosecution proposes to rely upon 16 witnesses but may not examine all the witnesses. Most of the witnesses are panch witness. Reliance is placed on the decisions of the Supreme Court in the case of **Union of India Vs. Ajay Kumar Singh alias Pappu**⁴ and the decisions of Kerala High Court in the case of **Jaseer S.M. Vs. State of Kerala** delivered in Criminal Bail Application No. 7238 of 2023 decided on 8th January 2024.

6. Undisputedly, the previous application preferred by applicant was rejected on merits by this Court. One of the ground urged while arguing the previous application for bail was that, the contraband was found in different packets. The packets were opened and mixed. Samples were obtained. Mixing of contraband is not permissible. The contraband was

4 2023 SCC OnLine SC 346

containing tops. The weight could have decreed. While rejecting the said application it was observed that, on opening the pockets it was found with flowers, fruiting tops, leaves, seeds, stalks having strong smell. Prejudice, if any, to the accused would be considered at the time of time. The grounds urged by the applicant cannot be considered at this stage. Thereafter, co-accused had preferred application for bail which was allowed by co-ordinate Bench vide order dated 11th October 2022. Order dated 19th December 2022, rejecting the said application for bail preferred by applicant was not before the co-ordinate Bench. Having rejected the application for bail and arriving at conclusion that said ground was to be urged during trial, bail cannot be granted to applicant on same ground. It is also pertinent to note that, what is found in possession of accused was approximately 40 kg. Ganja. The commercial quantity for ganja is 20 kg. Vast commercial quantity was found in the possession of the accused and no benefit could be given on the ground of weighing contraband together this stage.

7. In the case of **Mohd. Muslim alias Hussain Vs. State (NCT of Delhi)** (supra) the Apex Court granted bail to the accused for long incarceration for offence under NDPS Act on the ground that he was in custody for about seven years. It was held that section 37 of the NDPS Act would not be an impediment to grant bail in the event of long incarceration. In another decision of Supreme court in the case of **Union of**

India Vs. Ajay Kumar Singh @ Pappu (supra) the accused was involved in the offence under NDPS Act. He was directed to be released on bail by keeping in view the mandate of Article 21 of the Constitution of India. Order was challenged before the Apex Court. The accused was allegedly found in possession of Ganja. Accused was also involved in similar case in the past which was pending against him. The Apex Court observed that role of the said accused was required to be considered. The other accused who are granted bail were attributed a different role. It was also observed that, while passing impugned order of bail, Court had lost sight of section 37 of the NDPS Act. In the case of **Jaseer S. M. Vs. State of Kerala** (supra) it is held that, considering rigor of Section 37 of NDPS Act, Court is unable to accept the submission that the accused was in custody for 14 months and the trial has not commenced. Section 37 of the Act does not lay down any stipulation that the accused is entitled to be released on bail if the trial is not commenced within a particular period. It was further submitted that, Fasil's case was rendered in the peculiar facts and circumstances of the case that, there cannot be any rule of thumb or principle of universal application, dehors the procedure prescribed in the statute, laying down the time period within which the trial is to commence and be concluded. The Court cannot read into a statute any additional grounds which are conspicuously absent. There are several procedural formalities and prescriptions that have to be complied with before the trial under the Act

can commence. It is with this objective in mind that the parliament has incorporated section 36A in the Act. Giving an extended period for completing the investigation and laying final reports for the offences committed under the Act. The court has to be satisfied that the accused has fulfilled the twin conditions under Section 37 of the Act, in addition to the conditions under Section 439 of the Code before granting order of bail and lastly but most importantly, when individual liberty is pitted against larger public interest, it is the latter that must prevail over the former.

8. Learned Advocate for applicant has relied upon the several orders passed by this Court which are referred to hereinabove in support of this solution and on account of discrepancy and quantity which is based on the matter. As stated above, the previous application was rejected by observing ground urged by applicant are required to be agitated during trial.

9. In view of aforesaid circumstances, no case is made out for granting bail.

ORDER

Criminal Bail Application No. 3629 of 2023 stands rejected and disposed off.

(PRAKASH D. NAIK, J.)