

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3948 OF 2022

Prakash Waghoji Khedekar ... Applicant
Versus
The State of Maharashtra ... Respondent

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Mr. Mithilesh Mishra i/b S. R. Mate, for the Applicant.

Mr. A. A. Palkar, APP, for the Respondent-State.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 30th APRIL, 2024.

P.C.

This is an application for bail wherein the applicant has been arrested by Kothrud Police Station, Pune, in C.R.No. 228 of 2021, for the offences punishable under Sections 8(c), 20(B)(ii)(c) 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “N.D.P.S. Act”).

2 Before advertng to the facts, the mother of the applicant, who is also a co-accused, has already been released on bail by the trial Court.

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3 It is the case of the prosecution that when the police party was on patrolling duty within its jurisdictional area, an information was received that illegal drug trade was going on. The police party reached near Mourya Garden and noticed two persons sitting on a black coloured Activa scooter. Their activities were suspicious. After noticing the police team, they tried to flee away, however, they were apprehended on the spot.

4 During enquiry, they told their names viz. Chetan Maruti Mohole and Saheba Hologappa Mhetre. During their search in the presence of panch witnesses some plastic packets containing leafy substance was found in possession of both of them. They were apprised of their rights under Section 50(1) of the NDPS Act. During search of Activa scooter 580 grams of *Ganja* was recovered. The suspects informed the police that they had purchased the contraband from Gawli Pada and more *Ganja* has been stored at the said place.

5 Thereafter, the police team along with the Tahasildar went to the house of the applicant pursuant to the said information and informed him about their purpose of visit. The applicant asked the

police team that he would like to be searched before a Gazetted Officer. Accordingly, in the presence of Tahasildar and the police party the search was conducted. Plastic and steel drums were found in a room containing *Ganja*. The total weight of the contraband was 18 Kgs. and 995 grams.

6 It is the case of the prosecution that the applicant had shown the field of his uncle wherein there were 250 cannabis plants. The police team uprooted all the plants and prepared bundles. Each bundle contained 25 plants. Accordingly, there were ten bundles weighing about 154 kgs and 400 grams.

7 The applicant was arrested along with his mother. Statement of the witnesses were recorded. Panchanama was drawn. After investigation a charge-sheet was filed.

8 At the outset, learned Counsel Mr. Mishra would argue that apart from the ground of parity, the applicant deserves bail on the premise of non compliance of Section 52A of the NDPS Act. According to Mr. Mishra, since this being a stringent legislation, the minimum safeguards available to an accused against the possibility

of false involvement, there should be due compliance of the mandatory provisions which has not been followed in this case.

9 The inventory proceeding under Section 52A of the NDPS Act appears to have been followed on 12th November, 2021 whereas the panchanama was drawn on the spot on 22nd October, 2021. Since there is no compliance of Section 52A of the NDPS Act immediately after the raid itself, its very object has been frustrated as has been held in various decisions of the Supreme Court in the case/s of **Union of India Vs. Mohan Lal¹ and another and Simrnjit Singh Vs. State of Punjab²** as well as in the case of **Mohammed Khalid and another Vs. The State of Telangana³**, the Supreme Court has discussed the scope of Section 52A. Admittedly, the samples were not obtained before jurisdictional Magistrate.

10 The Supreme Court in the case of **Mohammed Khalid** observed thus;

“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

1 (2016) 3 Supreme Court Cases 379

2 2023 SCC Online SC 906

3 Criminal Appeal No (s) 1610 of 2023 and Criminal Appeal No (s) 1611 of 2023

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 Mr. Mishra has placed useful reliance on a decision in the case of **State of Maharashtra and Ors. vs. Lalit Somdatta Nagpal and Anr.**⁴.

12 It is needless to go into the other decisions cited by Mr. Mishra, especially, in the case of **Alakh Ram vs. State of U. P.**⁵ wherein it has been held that in a case where the prosecution has not been able to produce any document to show that the property from which the *Ganja* plant was uprooted belonged to the

4 (2007)4 SCC 171

5 2004 (1) SCC 766

appellant exclusively and in the absence of any nexus of the appellant with the field from where cannabis plants were uprooted by the police, the appellant can not be held guilty of the offence under Section 20 of the NDPS Act. Admittedly, there is no documentary evidence, much less, 7/12 extract of the land from where the cannabis plants alleged to have been uprooted. There is even no evidence to show that the plants were from the field of maternal uncle of the applicant. There is no acceptable and believable material indicating that the plants were cultivated by the applicant in the field of his maternal uncle (*mama*). Mr. Mishra has, therefore, rightly placed reliance on a decision of this Court in the case of **Shantaram B. Dhobale vs. State of Maharashtra**⁶.

13 Seizure panchanama in respect of the seized contraband does not inspire confidence. In light of the fact that the manner in which the alleged uprooting of the cannabis plants has been done by the respondents itself creates a doubt in light of the fact that each plant appears to have been uprooted along with flowering seeds and leaves. In view of Section 2(iii)(b) of the NDPS Act, *Ganja* is defined as;

6 BA No. 825 of 2022

“ ganja, that is, the flowering of 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;”

14 It is apparent that seeds and leaves are to be excluded when they are not accompanied by the tops. What is essential is that only flowering of fruiting tops of the cannabis plant can be described as *Ganja*.

15 In the case of **Kallapa Irappa Biradar vs. State of Maharashtra**⁷, it was observed that the definition of *Ganja* in NDPS Act takes in its ambit only the flowering and fruiting of the cannabis plants, excluding the seeds and leaves when not accompanied by the tops.

16 The manner in which raid was conducted, alleged cannabis plants were uprooted from the field and the manner in which seizure was conducted by the Investigating Officer leads me to come to a conclusion that there are reasonable grounds for believing that the applicant is not guilty. Admittedly, he has been behind the bars ever since his arrest on 22nd October, 2021. There is no hope of the

⁷ BA No. 590 of 2021

trial being concluded within a reasonable time. His mother has already been enlarged on bail. It appears improbable that in case of his release, the applicant would commit another offence. I am, therefore, inclined to grant bail to the applicant. Now, to the order.

ORDER

- (i) Application is allowed.
- (ii) The applicant- Prakash Waghoji Khedekar be released on executing a P.R. bond in the sum of Rs.25,000/- with one or two sureties in the like amount to the satisfaction of the Special Court, in connection with C.R.No. 228 of 2021 registered with Kothrud Police Station, Pune, for the offences punishable under Sections 8(c), 20(B)(ii)(c) 29 of the NDPS Act.
- (iii) The applicant shall attend Kothrud Police Station on first Sunday of each month between 10:00 a.m. and 1:00 p.m. till framing the charge.

(iv) After framing the charge, the applicant shall attend the trial Court on each date scrupulously.

(v) The applicant shall surrender his passport, if any, with the Investigating Officer.

(vi) 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.

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

(viii) The trial Court is directed to expedite hearing of this case.

17 The application is disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]