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

CRIMINAL REVISION APPLICATION NO. 526 OF 2024

Shivaji Vasant Bhosale

.. Applicant

Versus

The State of Maharashtra,
(Through Mahalunge MIDC Police Station)

.. Respondent

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- Mr. Ashok Kotangale a/w. Mr. Nikitesh Kotangale, Tanoj Joshi, Ms. Shivani Gautam, Ms. Vaibhavi Daware, Sumit Pal, Mr. Omkar Jadhav, Mr. Narendra Bhagat and Rashi Gandhi, Advocates for Applicant.
 - Ms. Manisha R. Tidke, APP for Respondent – State.
 - Mr. Jitendra S. Girnar, PSI Mahalunge MIDC Police Station present.
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CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 18, 2024.

P.C.:

- 1.** Heard Mr. Kotangale, learned Advocate for Applicant and Ms. Tidke, learned APP for Respondent – State.
- 2.** Mr. Kotangale would draw my attention to the impugned order dated 19.07.2024 rejecting the discharge Application of accused No.2 from the offence registered under CR No.0290 of 2023 dated 29.05.2023 at Mahalunge MIDC Police Station. He would submit that subsequent thereto charge-sheet No.151 of 2023 has been filed in Special Case No.112 of 2023.

3. At the outset, Mr. Kotangale would draw my attention to the First Information Report (for short “**FIR**”) which is at page No.90 of the Criminal Revision Application (for short “**CRA**”) and to its contents in Clause No.12. He would submit that Applicant namely Shivaji Vasant Bhosale has been falsely indicted in the present crime. He would submit that Applicant is a Truck driver working in a Company and on the date and time of the incident i.e. on 28.05.2023 at about 07:00 p.m. incidentally he happened to be returning to his house in Village Karanjvihire, Tal. Khed, Dist. Pune and was passing through Mahalunge Ingale village, at which time the patrolling police party apprehended the three accused including him. On spotting the police party, the three accused started running and were apprehended.

4. It is contended by Mr. Kotangale that said cannabis (गांजा) has not been recovered from the Revision Applicant, but it has been recovered from the other two co-accused. He would submit that Revision Applicant has no antecedents whatsoever and he has been falsely indicted in the present case and in that view of the matter, Application seeking discharge was made before the learned Trial Court.

5. Mr. Kotangale would contend that if the power of seizure and arrest in public place under the provisions of Section 43 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short

“NDPS Act”) is seen, then it would be a mere allegation against the Revision Applicant to have been found at the incident spot where the other two accused were present and were apprehended. Next, he would submit that statement which is recorded and reproduced in the FIR of accused No.1 namely Vikas Rohidas Badale that approximately since 2018 the accused No.1 alongwith the Revision Applicant in partnership was doing the business of sale of cannabis and the said cannabis used to be procured from one person called ‘Giribaba’, located in Visakhapatnam is merely an allegation which is unsubstantiated. In that view of the matter, he would submit that the confessional statement recorded under Section 67 of the NDPS Act has been dealt with by the 3 Judges Bench of the Supreme Court and the Court has held that the prosecution officers have very restrictive right in arresting and apprehending the accused who is not directly involved in the crime. He would question the admissibility in the trial of the said confessional statement against the Revision Applicant in the present case as material piece of evidence made out by the prosecution. Hence, he would submit that the impugned order passed below Exhibit “14” appended at page No.46 of the Application be quashed and set aside and Application below Exhibit “14” in Special (NDPS) Case No.112 of 2023 be allowed.

6. *PER CONTRA*, Ms. Tidke, learned APP for Respondent - State has drawn my attention to the impugned order at page No.46 of the

Application and FIR at page No.90. After reading the same, she would submit that when accused No.1 was apprehended on the incident spot, he disclosed that he alongwith the Revision Applicant who was also apprehended alongwith him were carrying out the business of sale of cannabis after procuring the same from Visakhapatnam. She would submit that compliance of mandatory provisions of Section 50(1) of the NDPS Act was done by the police officers and on conducting search, substantial cannabis of 10.86 kg. was found from the bag possessed by the accused No.1, as also another consignment of 5.364 kg. was found from the bag possessed by accused No.3. She would submit that the statement recorded by accused No.1 that he alongwith accused No.2 (Revision Applicant before me) were into the business and on the given date of incident they had come to transact sale of cannabis with accused No.3 namely Laxman Kumbhar, who had also arrived at the incident spot to collect the said goods from them holds true since all three accused have been apprehended. Both, accused No.1 and accused No.2 are residents of adjacent villages namely Karanjvihire and Mahalunge Ingale. There was no reason for accused No.2 to arrive at the incident spot on the said date if it is his case that he has nothing to do with the accused No.1 who has named him alongwith accused No.1.

7. The prosecution case is very clear. The charge-sheet submitted clearly talks about abetment of a criminal conspiracy to abet

a crime or offence which is punishable under the NDPS Act. Section 29 of the NDPS Act therefore comes into play and the fact whether the Revision Applicant i.e. accused No.2 has played any role of abetment or whether he is part of the criminal conspiracy to procure and sell cannabis alongwith accused No.1 would be the fact to be decided only after giving an opportunity to the Prosecution to lead their evidence. Once the Revision Applicant i.e. accused No.2 is arrested alongwith the other two co-accused who were possessing the cannabis without any license at the incident spot together, the Application seeking discharge by accused No.2 cannot be allowed at this stage so as to exonerate him from the offence. No case is made out by Applicant to be exonerated and discharged on the above facts before me. Hence, I am inclined to accept the submissions made by Ms. Tidke after perusal of the record of the case.

8. In view of my above observations and findings, the impugned order dated 19.07.2024 is upheld. However, at the request of Mr. Kotangale, trial in the present case before the learned Trial Court is expedited which shall be on the merits of the matter and strictly in accordance with law.

9. With the above directions, Criminal Revision Application stands dismissed.

[MILIND N. JADHAV, J.]

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