



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.870 OF 2024

Mohd. Kalim Shaikh Khalil
Vs.
State of Maharashtra, Mahagaon Police Station

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Rajendra Bidkar, Counsel for the applicant
Mr.K. R. Lule, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 15/10/2024

1. The present application is moved by the applicant under Section 439 of the Code of Criminal Procedure in respect of Crime No.1/2019 registered with Police Station, Mahagaon, District Yavatmal for the offences punishable under Section 8(c), 20(c) and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act").

2. The accusation against the present applicant is on the basis of a report lodged by the Police Inspector, Police Station, Mahagaon that he received information that in motor vehicle No.MH-21-V/3856 Tata Indica Vista Car, some persons are transporting contraband articles. He immediately called the panchas and along with the raiding party members intercepted the said car. On interception of

the said car, in presence of the panchas, the contraband article 'Ganja', weighing 89 K.G. worth of Rs.13,35,000/- was recovered from the applicant.

3. It is further alleged that in presence of the panchas, the samples were obtained and forwarded to the chemical analysis, after following the mandatory procedures. The accused was arrested and inventory was carried out. After completion of the investigation, the charge-sheet is filed.

4. Heard the learned Counsel for the applicant through Video conferencing, who submitted that as far as the application for grant of bail is concerned, it is not on ground of merit, but it is filed on the ground of delay in trial. The applicant is arrested on 01.01.2019 and since then, he is behind bar. He also placed on record the certified copy of the Roznama, which shows that though the charges were framed on 25.02.2021, then also the trial has not progressed and not a single witness is examined by the prosecution and there is absolutely no progress in trial. He further submitted that the co-accused is already released on bail on ground of delay in trial. In support of his contention, he placed on record various orders passed by the Hon'ble Apex Court, including **Deepak Dhaniram Sharma and anr. Vs. State of Maharashtra in Special Leave Petition No.6613-6614/2024, decided on 08.07.2024**, wherein the Hon'ble Apex Court has

considered that the petitioners are accused for the offences punishable under Section 20, 22 and 29 of the NDPS Act. The trial is currently ongoing and the petitioners have already undergone two and half years in jail and released them on bail. He further placed reliance on in **Rabi Prakash Vs. State of Odisha** in **Special Leave Petition No.4169 of 2023, decided on 13.07.2023**, wherein also the Hon'ble Apex Court has considered the aspect of delay in trial and released them on bail.

5. In the case of **Jitendra Jain Vs. NCB and Anr. in Special Leave Petition No.8900 of 2022, decided on 16.12.2022**, wherein also the aspect of delay in trial is considered. In this case, commercial quantity contraband was allegedly found with the petitioner and it is observed by the Hon'ble Apex Court that it is the case of the commercial quantity, but the allegations levelled against the petitioner are serious in nature but having regard to the fact that he is in custody for two years and conclusion of trial will take time, released the petitioner on bail.

6. In the case of **Ankur Chaudhari Vs. State of Madhya Pradesh** in **Special Leave No.4648/2024, decided on 28.05.2024**, wherein also the aspect of delay is considered and the petitioner therein is released on bail. He submitted that the present applicant is behind bar for more

than five years and there is absolutely no progress in the trial and the applicant cannot be put behind bar for indefinite period and in view of that, the application deserves to be allowed and the applicant be released on bail.

7. The learned APP strongly opposed the application and submitted that though the trial is not commenced but considering the gravity of the offence and the fact that commercial quantity contraband was found in possession of the present applicant, the application deserves to be rejected.

8. After hearing the learned Counsel for the applicant and the learned APP for the State, I have perused the investigation papers from which it reveals that on receipt of the secret information, the said vehicle was intercepted by the informant along with the other raiding party members in presence of the panchas. On interception of the said vehicle, the applicant was found in possession of the contraband articles weighing 89 K.G. Ganja worth of Rs.13,35,000/-. The investigation papers further show that after following the due procedure, especially the mandatory procedures, samples were obtained and forwarded to the chemical analysis and the inventory was conducted. Thus, as far as the involvement of the present applicant in the alleged offence is concerned, there is sufficient material to show his involvement. There is no dispute as to the

fact that the applicant is arrested on 01.01.2019. The copy of the Roznama, which is placed on record, shows that though the charge is framed long back in the year 2021, but there is no progress in trial, merely because the accused is not produced before the Court and Muddemal is not received by the Court.

9. On perusal of the Roznama, it reveals that no special efforts are taken by the investigating agency/prosecution to progress the trial. Considering the fact that the applicant is behind bar. The special Court has also not made any efforts for securing the presence of the applicant before the Court so as to progress in the trial. Thus, after perusal of the investigation papers, *prima facie* material coupled with the charge-sheet it reveals that the alleged substance is contraband article Ganja, which is found in possession of the present applicant. The involvement of the applicant reveals from the investigation papers.

10. In view of the catena of decisions relied upon by the learned Counsel for the applicant, as mentioned above, and especially in case of **Ankur Chaudhary** (supra), by referring the earlier decision held that inordinate delay in trial is affecting the right of the accused of a speedy trial which is in violation of Article 21 of the Constitution of India. In view of that the applicant has made out a case for grant of bail. Accordingly, the application deserves to be

allowed. Hence, I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) The applicant – **Mohd. Kalim Shaikh Khalil** shall be released on bail in connection with Crime No.1/2019 registered with Police Station, Mahagaon, District Yavatmal, for the offences punishable under Section 8(c), 20(c) and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on executing PR Bond of Rs.50,000/- with one solvent surety of like amount.
- (iii) The applicant shall report the concerned Police Station, once in a month, on first Saturday between 11.00 a.m. to 1.00 p.m.
- (iv) The applicant shall not directly and indirectly make an inducement, threat or promise to any persons, who are acquaintance with the facts of the case.
- (v) The applicant shall not indulge himself in similar type of the activities.
- (vi) In contravention of the above conditions, the bail granted to the present applicant, deserves to be cancelled.
- (vii) The trial Court shall not be influenced by the observation of this Court which is only for the purpose of bail.

11. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)