

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, PUSAD

CRIMINAL BAIL APPLICATION NO.397/2022

CNR No.: MHYA-04-000-892-2022

O R D E R B E L O W E X H . 1

(Passed on 3rd December 2022)

1] The present bail application has been filed under section 439 of Cr.P.C. on behalf of applicants **Anandrao Govardhan Jadhav** and **Vilas Ratan Jadhav**, seeking bail in Crime No.285/2022, under sections 20 of N.D.P.S, Act, registered at Police Station, Bitargaon.

2] **The facts of prosecution case are as under :**

Police Inspector, Police Station Bitargaon namely Kapil Laxman Maske, received secrete information on 15-10-2022 at about 15:50 hours that, within the area of Gram Panchayat, Santoshwadi (Ningnoor), some farmers have cultivated Ganja plants. He immediately gave information to S.D.P.O., Umarkhed and received permission. He made arrangement of the panchas, Gazetted Officer, person to prepare Weight and Measurement, Photographer and Police Staff. They started proceeding to Santoshwadi (Ningnoor). Towards Western side of Ningnoor, they found farmer Anandrao Govardhan Jadhav (Accused No.1) was present in Survey No.547. Anandrao Jadhav, is the owner of Survey No.547, admeasuring 1 H. 22 R. The raiding party found the crop of cotton and toor was standing. In between the plants of cotton

and toor, they found fully cultivated cannabis plants. There were 150 fully cultivated cannabis plants. The raiding party weigh the green leaves and they found 84 k.g. of green leaves of cannabis. They collected 300 grams for sample. They segregated the roots by drawing the panchanama. They segregated the stems. Thereafter, they went towards Survey No.551 owned by Ulhas Ratan Jadhav (Accused No.2). Area of Survey No.551 was 1 H. 22 R. In the standing crop of cotton and toor, they found fully cultivated plants of cannabis. The total weight of that seized cannabis was 119 k.g.

3] By filing this application, applicants have claimed regular bail on the grounds that, the report is totally false and baseless. No such panchanama about the recovery of the plants has been conducted in the field of accused. Nothing has been uprooted from the field of these applicants/accused. There is no reliable evidence brought on record to show that, the plants were seized from the fields of applicants. To save the real culprits, the applicants have been falsely implicated. Applicants are old aged persons. They are ready to abide by all the terms and conditions, which will be imposed on them. They will not flee from justice. They will not tamper with the prosecution witnesses. Hence, it is prayed that application may kindly be rejected.

4] Learned A.P.P. filed reply and strongly resisted the application. It is averred that, the accused were purposefully cultivated the cannabis plants in their fields. They had the

knowledge that it is a contraband drugs and very dangerous to human health. No explanation has been given by the accused that, they had cultivated Ganja for medical or scientific purpose. They had not acquired any license for the illegal cultivation. Accused were found in possession and ownership of cultivated land. The cannabis were cultivated in large area. Seized Ganja is more than commercial quantity. The Investigating Officer had followed all the mandates of search and seizure laid down under section 42 and 50 of the N.D.P.S, Act. Investigation is in progress. If accused are released on bail, there is possibility of tampering prosecution witnesses. Considering the gravity of the offence, it is prayed that application may kindly be rejected.

5] I have heard learned advocate Shri Mane, who is appearing for applicants. He has relied upon on the case of **Dattu Shankar Shine -Vs- The State of Maharashtra, Bail Application No.852 of 2021, dated 17th March 2022** and **Kunal Dattu Kadu -Vs- Union of India, Anticipatory Bail Application No.2173 of 2022, dated 29th August 2022** and vehemently argued that the substance which was seized from accused No.1 and 2 do not cover under the definition of Ganja as described in the N.D.P.S., Act. He further argued that, mere seizure of green leaves would not be the substance within the purview of terms Ganja. In the present case spot panchanama has not been conducted. While effecting seizure of the cannabis plants, police has not excluded the seeds, leaves and soil touched to the roots of the plants and have cumulatively weighed the

plants including everything. The prosecution has not certain as to how much is the exact weight of Ganja or cannabis plants recovered from the field of applicants. The police had not segregated the soil touched to its roots and the weight of the said cannabis plants. Therefore at this stage, it cannot be concluded that accused were found in conscious possession of commercial quantity. Investigation is over and there is no requirement of further custody of the accused. Therefore, it is prayed that application may kindly be rejected.

6] Per contra, learned A.P.P. Smt. Dawkhare, has placed reliance on the ratio laid down in case of **Narcotics Control Bureau -Vs- Mohit Agrawal, Criminal Appeal Nos.1001-1002 of 2022** and **Union of India (NCB) Etc. -Vs- Khalil Uddin Etc., 2022 Live Law (SC) 878** and argued that, at the stage of examining an application for bail in the context of section 37 of the N.D.P.S., Act, the court has not required to record the findings that the accused person is not guilty. The court has also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the N.D.P.S., Act, or not. The focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is not likely to commit an offence under the N.D.P.S., Act, while on bail.

7] In the present case, the complainant specifically stated that, after receiving secrete information, the raiding party

effected raid in the land Survey No.547 and 551. Panch witnesses were accompanied. Then the raid resulted in the recovery of large quantity of cannabis plants. In the present case, the accused have not successfully demonstrated that there are reasonable grounds to believe that they are not guilty of the offence alleged against them. The length of the period of custody is not the criteria to grant bail to the accused under section 37 of the N.D.P.S., Act. The possession and cultivation of plants by the accused in the land owned by them is prima facie proved. Therefore, application may kindly be rejected.

8] I have gone through the F.I.R., seizure panchanama and statement of witnesses. It is alleged that, after receiving secrete information, the Investigating Officer followed the mandatory procedure. He called Gazetted Officer, panch witnesses, Photographer, person to weigh alongwith weighing material and effected raid at village Santoshwadi (Ningnoor). It is alleged that, Survey No.547 was admeasuring 1 H. 22 R. There were standing crop of cotton and toor. In between the lane of cotton and toor, they found fully cultivated plants of cannabis. The plants of cannabis were fully cultivated. There were in all 150 cannabis plants. They segregated green leaves from the roots and stems in presence of panchas and the Photographer. They found 84 k.g. green leaves worth Rs.8,40,000/-. Sample of 300 grams was collected. Thereafter, they measured the roots with soil and then found it was 23 k.g. Thereafter, they measured the weight of stems, which was 40

k.g. The total weight of cannabis plants was 147 k.g. It is alleged that, at the time of effecting raid, accused No.1 was working in the land Survey No.547 and he told he is the owner of that land.

9] Further, it is alleged that the raiding party conducted raid in land Survey No.551, which is owned by accused No.2. They found 127 cannabis plants, which were fully cultivated. They segregated the roots, stems and green leaves. They have count separate weight of leaves and stems. As per F.I.R. and seizure panchanama, the total weight of cannabis was of 119 k.g. Thus, from the F.I.R. and panchanama, it appears that recovery was made from the accused and they were found in conscious possession of the commercial quantity of narcotic drugs.

10] At this stage, it is necessary to mention section 37 of the N.D.P.S., Act :

**“[37. Offences to be cognizable and non-bailable.–
(1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) –**

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless –

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]

11. It is evident from a plain reading of the non-obstante clause inserted in sub-section (1) and the conditions imposed in sub-section (2) of Section 37 that there are certain restrictions placed on the power of the Court when granting bail to a person accused of having committed an offence under the NDPS Act. Not only are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be factored in. The conditions imposed in sub-section (1) of Section 37 is that (i) the Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offence while on bail.

12. The expression “reasonable grounds” has come up for discussion in several rulings of this Court. In “**Collector of Customs, New Delhi v. Ahmadaliev Nodira**”, a decision

rendered by a Three Judges Bench of this Court, it has been held thus :-

“7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are : the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. **The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.”**

13. The expression “reasonable ground” came up for discussion in **“State of Kerala and others Vs. Rajesh and others”** and it is observed by the Hon'ble Supreme Court, as below :

“20. The expression ”reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the Cr.P.C., or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the

accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

11] So far the present set of facts is concerned, the F.I.R., seizure panchanama and the statement of witnesses prima facie proved that, accused No.1 and 2 had cultivated cannabis in their own land without having valid license. The seized material is of commercial quantity. There is no reasonable ground for believing that, the accused are not guilty of the alleged offence. The accused are farmers. They have intentionally and with full knowledge cultivated the contraband/cannabis in their own agricultural land. It seems that, at this stage one cannot impress on the point that they are not likely to commit offence while on bail. Thus, prima facie it appears that, the accused have failed to prove the twin-test laid down by the Hon'ble Apex Court in case of **Union of India through NCB Lakhano -Vs- Mohd. Nawaz Khan**, (Criminal Appeal No.1043 of 2021). Therefore, I proceed to pass following order.

ORDER

The application stands rejected.

Date : 03-12-2022.

(Smt. N. H. Makhare)
Additional Sessions Judge,
Pusad, Dist. Yavatmal.