

MHKO010013212020



Order below Exh. 4 in Special Case No. 77 of 2020.

1. This is second application filed under section 439 of Cr.P.C. as accused is arrested in Crime No. 274 of 2020 under Sections 8 (C), 20 (b) (ii) (B) of The Narcotic Drugs and Psychotropic Substances Act, 1985 registered with Shahupuri Police Station, Kolhapur.
2. It is the case of the prosecution that on 26.2.2020 at about 9.25 p.m. the accused found in possession of 8 Kilo 9 grams Ganja at Kavla Naka to Niyaz Hotel road. Narcotic Drug Ganja has been seized from his possession by following due process of law. Then report has been filed against him by Police Naik Jagdish Vasudeo Bamnekar. On the basis of which above referred crime has been registered against the accused.
3. This accused is arrested on 27.2.2020. He was remanded to MCR. Earlier bail application No. 248 of 2020 filed by the accused has been rejected vide order dt. 17.3.2020. After

filing chargesheet he has filed this second application for granting bail.

4. Following points arise for my determination and I have recorded my findings against for the reasons given thereunder :-

<u>Points</u>	<u>Findings</u>
1. Whether the applicant is entitled to be released on bail ?	– Yes.
2. What order ?	– As per final order.

- REASONS -

As to point No.1 and 2 :-

5. Heard arguments of both sides. Learned counsel Mr. A. S. Khothlande submitted that this accused is innocent. He is having no concern with alleged offence. He is implicated in this case on suspicion. The quantity found in possession is above small quantity and not commercial quantity. The trial against accused will take its own time. He is not required to be detained in jail by way of punishment. He has no criminal antecedents. He is ready to obey the conditions. Hence, urged

for granting bail.

6. The learned counsel for the accused placed his reliance on following case laws.

1. *Birbal Prasad @ Birbal Prasad Sah Vs. The State of Bihar – Crim. Appeal No. 175/2018 (Arising from SLP (crl) No. 8464/2017 - decided on 25th January, 2018 – Supreme Court of India.*

2. *Devdas Bannu Netale Vs. The State of Maharashtra – Crim. Bail Application No. 1937 of 2019 dt. 15th October, 2019- Bombay High Court.*

Placing reliance on above decisions he urged for granting bail.

7. As against this Learned APP Shri. Mahadeshwar submitted that raid was effected on accused. During his personal search large quantity of Ganja 8 kilo 9 grams worth Rs. 1,60,000/- found in his possession. If he is released on bail there is possibility of fleeing the accused from justice. There is possibility of tampering prosecution evidence. There is no change in the circumstance. Considering nature of offence his application for bail may be rejected.

8. I have gone through the case laws relied on behalf of

accused cited supra, wherein the ratio laid down that when accused is found in possession of Ganja which is a non-commercial quantity he can be released on bail.

9. On evaluation of chargesheet and documents filed along with chargesheet it prima facie reveals that there is involvement of accused in the crime. However, quantity of Narcotic Drug found in possession of accused is not commercial quantity. It is above small quantity and below commercial quantity. No criminal antecedents of accused brought on record by the prosecution at this stage. Now investigation is completed and chargesheet is filed. The trial against accused will take its own time. He is not required to be detained in jail by way of punishment before conclusion of trial. There is no possibility of fleeing the accused from justice. Hence, considering nature of offence and ratio laid down in both cases cited supra relied on behalf of accused I am of the view that accused is required to be released on bail by imposing conditions on him. Hence, I answered point No. 1 in the affirmative and proceed to pass following order :-

ORDER

1. Application is allowed.
2. Accused Vinayak Kashinath Rathod be released on bail on

executing P.B. of Rs.50,000/- and furnishing one or more sureties in like amount by him on following conditions.

- A. He shall not commit an offence similar to the offence of which he is charged.
- B. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer to tamper with the evidence.

Date : 12.8.2020.

(B.D.Shelke)
Special Judge, Kolhapur.