

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

BAIL APPLICATION NO.825 OF 2022

Shantaram B. Dhoble

@ Babu Maharaj

... Applicant

Vs

The State of Maharashtra

... Respondents

...

Mr. Mithilesh Mishra i/by Mr. Raju Mate for the Applicant.

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

PSI Sujata Patil, Shirur Police Station, Pune present.

CORAM : SANDEEP K. SHINDE J.

DATE : 9th NOVEMBER, 2022.

P.C. :

Heard learned counsel for the applicant and the learned Prosecutor for the State.

2 Applicant seeks his enlargement on bail in connection with the Crime No.899 of 2021 registered with Shirur Police Station, Pune for the offence punishable under Sections 8(c), 20, 22, of the Narcotic Drugs and

Psychotropic Substances Act, 1985 ('NDPS Act' for short) and Sections 2(16), 9, 39, 48(a), 49(b), 51, 52 of the Wildlife (Protection) Act, 1972. Applicant is a priest of Hanuman Mandir Math. It is alleged that on a tip off, raid was conducted in the premises of the Math, wherefrom 10 kgs of Ganja was recovered. In addition thereto, cannabis plants found cultivated in the land adjoining to the Math were uprooted and recovered of which weight was 31.445 kgs. That apart two antlers and skin of deer, were found in the temple math. Applicant was arrested on 19th November, 2021. Investigation is over and the charge-sheet has been filed.

3. Learned counsel for the applicant has taken me through the charge-sheet to contend that, there is no iota of evidence, suggesting that, applicant cultivated cannabis plants. It is submitted that land from which the plants were uprooted, was not owned by the applicant, but village land as is evident from the panchanama. It is, therefore, submitted that prima-facie, there is no evidence indicating

that applicant has cultivated cannabis plants. In so far as the alleged recovery of 10 kgs. of Ganja is concerned, it is submitted that the it being non commercial quantity, rigors of Section 37 of the NDPS Act would not apply. It is further submitted that there is absolutely no material to show exact quantity of weight of Ganja detected from the cannabis. Learned counsel for the applicant in support of his contention relied on the judgment of the Supreme Court in the case of **Alakhram 2004 SCC 766**. In the said case, accused was acquitted of the offence for cultivating prohibited plant for want of evidence of actual cultivation of such plants by him. Learned counsel would also rely on orders passed by this Court in Criminal Bail Application No.2583 of 2019 (Revati Mohite-Dere, J.) and the orders in Bail Application No.211 of 2019 (Mangesh Patil, J.) a Bench at Aurangabad.

4 On the other hand, the learned Assistant Government Pleader would contend that allegations, prima-

facie, attract provisions of Section 20(a) of the NDPS Act and it being punishable with imprisonment, which may extend to ten years and fine, which may extend to one lakh, applicant may not be granted bail.

5. I have carefully considered rival submissions and perused the charge-sheet.

6. Section 8(b) of the NDPS Act, prohibits cultivation of cannabis plants and under Section 20 of the NDPS Act, such cultivation of cannabis is made punishable with imprisonment and fine. However, in the case at hand, there is no evidence at all which would suggest that cannabis plants were cultivated by the applicant. That apart, land from which the plants were up-rooted and collected was, village land as could be seen from the panchanama itself. In so far as the alleged recovery of 10 kgs of Ganja is concerned, same being not commercial quantity, rigors of provisions of Section 37 of NDPS Act would not apply. It may

be stated that though the Chemical Analyser's report suggests that detection of cannabis, constituents from extracts of the plants are positive, however, charge-sheet does not indicate quantity of ganja extracted from such plants. Above all the charge-sheet, prima-facie, does not suggest that temple from which ganja was recovered, was in his exclusive possession of the applicant. To put it differently, temple premises being accessible to the public at large, it cannot be said that said premises were in exclusive possession and control of the applicant.

7. In view of the facts above and for the reasons stated, case is made out for releasing the applicant on bail. Thus, following order;

ORDER

(i) The applicant in Crime No.899 of 2021 registered with Shirur Police Station, Pune shall be released on executing PR bond for the sum of Rs.30,000/- with one or more sureties in like sum.

(ii) The applicant shall attend the concerned police station once in a month, I.e, 2nd Monday of every month between 1 to 2 p.m. till the charge is framed.

(iii) The applicant shall furnish his permanent residential address and contact number to the Investigating Officer within seven days from the date of his release on bail.

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case

8 The application is accordingly allowed and disposed of.

9 It is made clear that observations made here-in-above be construed as expression of opinion for the purpose of bail only and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)