

Order below Exh.1 in Cri. Bail Application No.184/2022.
[Deepak Lalsingh Mahale Vs. State]

The present application is moved by the applicant-accused Deepak Lalsingh Mahale under section 439 of the Code of Criminal Procedure (hereinafter referred to as “Cr.P.C.” for short) for bail in connection with CR No.40/2022 registered with Dindori Police Station for the offence under section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the “NDPS Act” for short) on 30.1.2022.

2. It is stated that applicant-accused was arrested on 30.1.2022 and on 31.1.2022 produced before the learned JMFC, Dindori and since then he is in MCR. It is further stated in the application that he is permanent resident of Sakari, Dist. Dhule and working as helper in Banganga paper mills, Dindori, Nashik. Applicant-accused has no connection with the present crime. Hence, prayed for release on bail.

3. Application is opposed by the State. The I.O. has filed his report.

4. Perused the record. Heard, both the parties.

5. The learned counsel Shri. Deshmukh submitted that there is no reference of the applicant-accused in the FIR. The FIR discloses that police have raided Gat No.22 situation at Thepanpada shivar, Tal. Dindori, Dist. Nashik and found illegally cultivation of *Opium plants*. Police have seized 803 kg. muddemal worth Rs.8,03,000/- and thus police have apprehended the said agriculturist by name Kantilal @ Ramchandra Govind Thepane on

the spot, who owned the said field. Therefore, the learned counsel represented to applicant-accused has submitted that there is no any single reference of present applicant-accused in the FIR and therefore, there is no case against applicant-accused. During his course of argument he placed reliance upon following case-laws;

i) Aryan Shahrukh Khan Vs Union of India and Anr., AIR Online 2021 Bom 4854,

ii) Bharat Chaudhary Vs Union of India, 2022 ALL SCR(Cri)10,

iii) Pradip Sharm Vs State of M.P. 2021 CRI.L.J. 560

iv) Naushad Khan Vs State of U.P. AIR online 2022 ALI 1129,

and therefore, submitted to release the applicant-accused on bail.

6. On the other hand, learned APP Shri. Suryavanshi has submitted that there is reference of applicant-accused in investigation. The accused No.1 who was arrested and interrogated by the police has disclosed that the present applicant-accused who was working in Banganga Paper Mills alongwith accused No.3. These both accused have hatched a plan with the help of accused No.1 and this applicant-accused, who is from Taluka Sakri, District Dhule made available seeds for plantation of *Opium* to the accused No.1 and had taken him into the confidence that he alongwith accused No.2 would take care the entire process including plantation and upto the sale. These accused No.2 and 3 also incurred entire expenditure for purchasing seeds, plantation, cultivation etc. Therefore, the present applicant-accused has played vital role in commission of crime and hence, he opposed the bail application by stating that the case-laws relied upon by the learned counsel for applicant-accused are not helpful to him considering the above factual situation and therefore, prayed to reject the bail application.

7. I have gone through the entire proceeding. The accused are charged under section 18 of the NDPS Act, which is reproduced for ready reference as under:

“18. Punishment for contravention in relation to opium poppy and opium.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to 2 [one year], or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable

to fine which shall not be less than one lakh rupees which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees;

(c) in any other case, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees”.

8. The seized quantity is commercial quantity as per Notification attached to the present Act, as it exceeds 2.5 kg, the Bench Mark as per Sr. No.92 of the said table mentioned in the Notification. Therefore, section 37 of the NDPS Act get attracted while considering the bail application of the present applicant-accused. Section 37 of the NDPS Act is reproduced for the ready reference as under:

“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 3 [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”.

9. Thus, section 38 mandates to the Court that when any person involved in any offence punishable under section 19, 24, 27A or for an offence involvement in commercial quantity shall not be released on bail, unless the Public Prosecution has been given an opportunity to oppose the application for such release and 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. These two conditions are mandatory while dealing with the bail application made by the applicants-accused under the provisions mentioned above.

10. So far as case-laws relied upon by the learned counsel for applicant-accused is concerned in **Aryan Shahrukh Khan Vs Union of India and Anr.(supra)** wherein Hon'ble Bombay High Court held that,

“ Section 67 of NDPS Act provides for powers to call for information. Hence, it also empowers investing Officer to record confessional statement of the Accused which has a binding effect. Prosecution has claimed that confessional

statements given by Accused persons admitting to have committed offence alleged against them, however, such confessional statements are not having any binding effect in law as the said issue is squarely covered by the Apex Court in the matter of Tofan Singh Vs State of Tamil Nadu in Criminal Appeal No.152 of 2013 reported in AIR 2020 SC 5592. Once the confessional statement of the Applicant/Accused cannot bind them of the offence in view of the Judgment of Supreme court in the matter of Toofan Singh (cited supra), the claim put forth by the Respondent that Accused persons have accepted their involvement in the crime is liable to be rejected.

16. However, in view of submissions made by Mr. Singh, it is worth to clarify here that such confessional statements can be considered by the investigating agency only for the investigation purpose and cannot be used as a tool for drawing an inference that Applicants have committed an offence under the NDPS Act as has been alleged against them”.

In case of **Bharat Chaudhary Vs Union of India (supra)**, wherein Hon’ble Supreme court held that,

“In the absence of any psychotropic substance found in the conscious possession of A-4, we are of the opinion that mere reliance on the statement made by A-1 to A-3 under Section 67 of the NDPS Act is too tenuous a ground to sustain the impugned order dated 15th July, 2021. This is all the more so when such a reliance runs contrary to the ruling in Tofan Singh [2020 ALL SCR (Cri) 1689] (supra). The impugned order qua A-4 is, accordingly, quashed and set aside and the order dated 2nd November, 2020 passed by the learned Special Judge, EC & NDPS Cases, is restored. As for Raja Chandrasekharan [A-1], since the charge-sheet has already been filed and by now the said accused has remained in custody for over a period of two years, it is deemed appropriate to release him on bail, subject to the satisfaction of the trial Court”.

Further in case of **Pradip Sharm Vs State of M.P. (Sura)**, wherein Hon’ble Madhya Pradesh High Court held that,

“Since pre-independence era, the Courts have consistently taken a view that the disclosure statement of any accused can only be used against its author and not against any other co-accused”.

In case of **Naushad Khan Vs State of U.P.(supra)**, wherein Hon'ble Utter Pradesh High Court held that,

“Court have taken notice of the overcrowding of jails during the current pandemic situation (Ref: Suo Motu Writ Petition (c) No.1/2020, Contagion of COVID 19 Virus in prisons before the Supreme Court of India). These circumstances shall also be factored in while considering bail applications on behalf of accused persons”.

11. However, the facts of the present case altogether different. A commercial quantity of *opium plants* are seized on a large scale from the accused No.1. This applicant-accused has made every efforts from providing seeds from his native place District Dhule for plantation of *Opium* and also incurred every expenses for plantation of the *Opium* alongwith accused No.3. These two accused have prepared a plan and convinced the accused No.1 for plantation of *Opium* by inducing him that by selling *Opium* they will get maximum amount by selling the said *Opium* in the market and thereby all the accused would be rich within a short period of time. Therefore, the case-laws relied upon by the learned counsel for applicant-accused in the case in hand, particularly when the investigation is at delicate stage. I.O. has to further investigate the matter i.e. original source of seeds of *Opium* and other relating issue pertaining to the investigation.

12. Recently the Hon'ble Supreme Court in case of **State of Kerala & Ors. Vs Rajesh & Ors 2020 ALL SCR (Cri)1555** has held

in para 18 that,

“The jurisdiction of the Court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted in case there are reasonable grounds for believing that accused is not guilty of such offence, and that he is not likely to commit any offence while on bail. It is for the mandate of the legislature which is required to be followed. At this juncture, a reference to Section 37 of the Act is apposite. That provision makes the offences under the Act cognizable and non bailable. It reads thus: “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 3 [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”.

13. Thus, keeping in view of the mandates of Section 37 of the NDPS Act and the ratio laid down by the Hon'ble Supreme court, this application is decided on the touch stone as per the ratio cited above. The recovery of the *Opium plants* made from the field of accused No.1. The present applicant-accused has provided the seeds for plantation of *Opium*. He took every responsibility from plantation till its sale and also incurred expenses alongwith accused

No.3 and convinced the accused No.1 who make available his land for cultivation of *Opium* as revealed from the investigation done so far by the police. Thus, prima-facie case is made out against the applicant-accused and if the accused release on bail, there is every chances that he may repeat the same crime. Therefore, I am of the opinion that present application made by the applicant-accused is devoid of merit. Hence, Hence, following order.

ORDER

- i) Bail application No.184/2022 is hereby rejected.
- ii) Informed to all concerned accordingly.

Date- 08.03.2022

(M. A. Shinde)
Additional Sessions Judge-8,
Nashik.