

Order below Exh.1 in Cri. Bail Application No.166/2022.

[Mohan Waman Dalvi Vs. State]

The present application is moved by the applicant-accused Mohan Waman Dalvi 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 31.1.2022 and produced before the learned JMFC, Dindori and since then he is in MCR. It is further stated in the application that he is local resident of Thepanpada, Tal. Dindori, Dist. 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. The applicant-accused has also filed some documents on record to show his presence at his employment place at the time of incident. Perused the record. Heard, both the parties.

4. The learned counsel Shri. Bhale 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 and therefore, submitted to release the applicant-accused on bail.

5. 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 has brain behind the cultivation of said *Opium plants*. He is friend of accused No.1 and with the help of present applicant-accused said plantation took place at Gat No.22 and therefore, prayed to reject the bail application.

6. I.O. has produced the case papers relating to investigation. he pointed out that accused No.1 disclosed during the course of investigation the involvement of this applicant-accused as stated by learned APP. I.O. further stated that accused No.2 and 3 were working in same establishment and he contacted to accused No.1 and made available the seeds required for cultivation of *Opium plants* with the help of applicant-accused. He also made available tractor and other relating tools and cost for requirement of cultivation of *Opium plants* with the help of present applicant-accused and thus, this applicant-accused has major role in commission of present crime.

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. 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”.

11. 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 is brain behind the said crime. He made available everything for cultivation of *Opium* to the accused No.1 with the help of applicant-accused, which is disclosed during the course of investigation. 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. 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.166/2022 is hereby rejected.
- ii) Informed to all concerned accordingly.

Date- 14.02.2022

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