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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 20th September, 2024*+ **BAIL APPLN. 1256/2024****RAVINA KUMARI**

R/O - D/O Sh. Ranveer Singh,
R/O - Village Malikpur,
Karai, Kirali, Agra, Uttar Pradesh.

.....Petitioner

Through: Mr. Satyam Thareja & Ms. Harshita,
Advocates.

versus

THE STATE (NCT OF DELHI)

Through it's SHO
P.S. Badarpur, Delhi

.....Respondent

Through: Ms. Richa Dhawan, APP for State.
S.I. Satyanarayan, PS Badarpur,
Delhi.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. This first *Bail Petition* under Section 439 of the Code of Criminal Procedure, 1973 has been filed on behalf of the petitioner seeking grant of regular bail in *FIR No. 146/2023* registered under Section 29 read with Section 20(B)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as "NDPS Act, 1985"*) at Police Station Badarpur, Delhi.
2. **Briefly stated**, on 19.04.2023, on the basis of secret information at



about 02:30 P.M., the petitioner/Ravina and co-accused Hari Ram were apprehended while she was travelling as a pillion rider on a Honda Scooty driven by the co-accused. On the search of black colour backpack which the petitioner/Ravina was carrying, **23.465 kg** of Ganja was recovered, while 4.0 kg of Ganja was recovered from the black coloured backpack of co-accused/Hari Ram.

3. The IO obtained 4 days custody/ remand of the Petitioner/ accused on 24.04.2023. On completion of investigations, the Chargesheet has been filed in the Court.

4. The *FIR no. 146/2023* under Section 20/29 NDPS Act was registered on 19.04.2023 by P.S Badarpur on a false and concocted complaint of the Complainant. The investigations in the present FIR are complete and the Chargesheet has also been filed before the Trial Court. However, she has been in Custody since 19.04.2023 despite being a mother of an 8 year old girl child and she has not been able to live with her husband as well.

5. It is pleaded that there is alleged recovery of **23.456 kg Ganja** from her carry bag, included the leaves and stalks/ stems which does not fall in the definition of contraband material. Thus, without the stems, the actual quantity of Ganja would only be **mere 3.465 Kg.**, i.e. much lesser than the commercial quantity of 20 kgs.

6. Even the Forensic Report dated 01.07.02023, reflects that the weighed sample which is in small quantity also includes the weight of leaves, stalks/stems. Similarly, the FIR dated 19/4/2023 and the seizure Memo establish that along with the alleged flowering buds of cannabis/ 'ganja', the leaves and stalks/ stems have also been seized by the I.O. only



to falsely implicate the Petitioner and make out a case of recovery of commercial quantity, from her. The petitioner has placed reliance on the decision in Ibrahim Khwaja Miya Sayyed Vs State of Maharashtra 2023 SCC Online Bom 2873 wherein it was observed that while granting bail, the weight of the leaves and stems has to be excluded while weighing the alleged seized quantity of the contraband material.

7. The petitioner has submitted that she is a law abiding citizen who has clean antecedents and she belongs to a respectable family with deep roots in the society. Furthermore, all the witnesses are police officials and there is not even single public witness which puts the authenticity of seizure of alleged contraband material, under cloud. The alleged case property i.e. the contraband material is already seized and is not likely to be tampered. Also, there is no possibility of the applicant tampering with the witnesses and the evidence. Moreover, there is no possibility of the applicant committing the same offence while on bail as she has clean previous records. Thus, the requirements of Section 37 b (ii) of the NDPS Act stands satisfied for enlargement of bail to the Petitioner.

8. Therefore, the petitioner has sought regular bail in the present FIR no. 146/2023 dated 19.04.2023 U/s 20/29 NDPS Act.

9. **Ld. Counsel for the Petitioner** has placed reliance upon Kunal Dattu Kadu Vs Union of India 2022 SCC Online Bom 1770, Shri Sandip Ashok Raut Vs State of Maharashtra 2015 SCC Online Bom 4543, Rajesh Sharma Vs State of Rajasthan 2024 SCC Online Raj 485, Bettanayaka Vs State of Karnataka 2020 SCC Online Kar 3916, Ratanlal Kharadi Vs State of M.P. 2019 SCC Online MP 6083, Ratnesh Vs State 2017 SCC Online Del 9883,



Suresh Kumar Vs State 2016 SCC Online Del 1209 and Lavlesh Kumar Vs State 2015 SCC Online Del 12574, K. Kavitha vs ED SLP(Crl) No. 10785/2024, to buttress the arguments advanced.

10. **The Status Report** has been filed on behalf of the State and is taken on record, wherein the present petition is opposed on the ground of gravity of the offence. It is submitted that it is a clear case of recovery of about 28 kgs of Ganja and the same comes within the Section 29 of the NDPS Act, 1985 against the petitioner as well as co-accused, Hari Ram as they were travelling together on the Honda Scooty. The FSL has confirmed that the contraband in both the backpacks was *Ganja* and the petitioner and co-accused were carrying commercial quantity of Ganja which is more than 20 Kgs. The bar of Section 37 of the NDPS Act, 1985 would thus, be applicable. Moreover, the prosecution witnesses are yet to be examined and if the bail is granted to the petitioner, there is likelihood of the petitioner indulging in the same offence and even jumping the bail.

11. Therefore, the present petition has been opposed on behalf of the State.

12. **Submissions heard and judgments perused.**

13. The case of the prosecution is that allegedly total 28 kg of Ganja, (23.456 Kg from the Petitioner and 4.015 Kg from the co-accused Hari Ram), was recovered, which was placed in white colour plastic sacks, marked as A & B and sent for forensic examination.

14. Though it is not in dispute that Ganja was recovered, the petitioner has taken a specific plea that the recovered quantity of **23.456 kg Ganja** included the leaves and stalks/ stems which does not fall in the definition of contraband material and the actual quantity of Ganja would only be



mere 3.465 Kg., i.e. much lesser than the commercial quantity of 20 kgs.

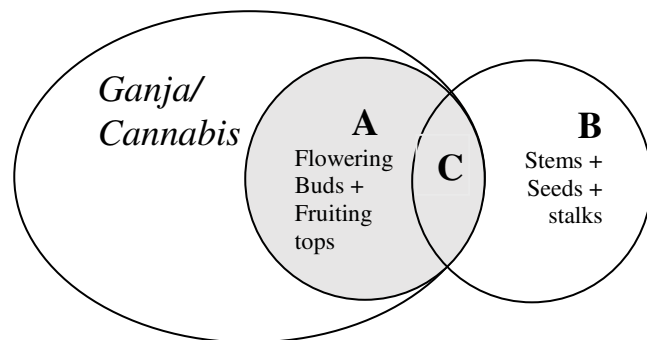
15. *At this juncture, it becomes apposite to analyse whether the recovered material falls within the definition of “Ganja”?*

16. The definition of Ganja is provided under section 2 (iii)(b) of the NDPS Acts which reads as under :-

“(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated;”

17. From the definition, it is evident that flowering buds and fruiting tops of the cannabis plant would be covered under section 2 (iii)(b) but merely leaves /seeds and stalks would not form a part of the definition of “Ganja” unless accompanied by the flowering and fruiting tops.

18. This can be represented accurately by the below Venn diagram:-



19. Thus, the intention of the Legislature appears to be clear that in case of *Ganja*, if it is merely **Category A** i.e. a homogenous mixture of flowering buds and fruiting tops, then the same would fall within the meaning of “*Cannabis*”, however, if it is merely **Category B** i.e. a homogenous mixture of seeds/leaves/stalks without the fruiting tops and buds, then the same would not attract the provisions of the NDPS Act.

20. Though the position with respect to homogenous mixtures i.e.



Category A & B is clear, there is often a conundrum surrounding the quantification of *Category C*, i.e. the overlap between *Category A* and *Category B* constituting the heterogenous mixtures which include both the flowering tops and fruiting buds, along with the stems/ leaves and seed.

21. From the framework of the entire NDPS Act and a reading of S. 2 (iii)(b), it emerges that if the material seized is a heterogenous mixture/Category C, constituting of Category A mixed with Category B, the placebo material such as stalks/leaves/stems (Category B) would not constitute an actual part of the drug and only the actual content and weight of the narcotic drug (Category A) would be relevant for determining whether it would constitute small quantity or commercial quantity.

22. Similar observations have been made in the cases of Kunal Dattu Kadu (*Supra*) and Shri Sandip Ashok Raut (*Supra*) and it was held that to ascertain whether the material seized was Ganja, it will have to be ultimately ascertained whether the flowering and fruiting are accompanied by the seeds and leaves as the weight of these seeds/leaves/stems, has to be excluded.

23. Axiomatically, the weight of seeds/stalks and stems (*Category B*) should be excluded while calculating the actual quantity (*Only Category A*) recovered.

24. Evidently, the present case is of a recovery falling within *Category C*. The Chargesheet records that when the Petitioner/Ravina was apprehended, blue coloured plastic polythene bag was recovered from her which contained ***grass-like flowery-leafy material along with its stems***, which appeared to be “Ganja” and was seized *vide* the seizure memo. On weighing, the recovered Ganja on the electronic weighing machine, the total weight of the quantity recovered, was about **24.145 Kg.**



25. The FSL Report confirmed that *on physical, Chemical. Microscopic and TLC examination, exhibits 'SA-1' and 'SB-1' were found to be "Ganja"*.

26. Pertinently, the recovered quantity of about **24.145 Kg** was just 4.145 kgs more than the commercial quantity. Since, the entire substance including stems/stalks and dried leaves were weighed together without quantifying the weight of the flowering or fruiting tops, the quantity of 'Ganja' seized from the Applicant may be less than **commercial quantity** so as to attract Section 20 of the NDPS Act. The weight of actual Ganja recovered is a matter of trial.

27. It has been consistently held that if there is a *prima facie* discrepancy in what was seized and what was analysed and weighed and there are reasonable grounds to believe that the petitioner is not guilty of offences dealing in commercial quantity. Consequently, the rigors of Section 37 of the NDPS Act, 1985 for grant of regular bail, would not become applicable as has been held in the case of Ibrahim Khwaja Miya Sayyed (Supra).

28. In the case of Suresh Kumar (Supra), the Coordinate Bench of this Court gave benefit to the accused under Section 20 (b) (C) to 20 (b)(ii)(B) by observing that the weight of the contraband was not precise and the actual quantity of Ganja seized could not be determined because the FSL reflected that seeds, which do not come within the definition of Ganja, were weighed along with the flowering and fruiting tops. Thus, when there is a doubt on the actual amount of recovery of contraband, then this unexplained discrepancy would result in a benefit accruing in favour of the bail applicant.

29. Similar observations have been made in the case of Rajesh Sharma (Supra), Bettanayaka (Supra), Ratanlal (Supra) and Ratnesh (Supra).



30. *In light of the above discussion, it is settled that if there is the discrepancy in weight, as in the present case, the same would be a matter of trial.*

31. Admittedly, the petitioner has not been involved in any other crime previously and has clean antecedents. Moreover, there is nothing to show that the petitioner is likely to tamper with the evidence or influence the witnesses. Considering the background, it can also not be said that she is a flight risk.

32. Considering the nature of allegations and the petitioner's clean antecedents, coupled with the fact that the trial is still ongoing, the present petition is allowed and the petitioner is admitted to regular bail in FIR No. 146/2023 registered under Section 29 read with Section 20(B)(ii)(c) of NDPS Act, 1985 at Police Station Badarpur, Delhi, upon his furnishing a personal bond in the sum of Rs. 25,000/- and one surety of the like amount to the satisfaction of the learned Trial Court, and further subject to the following conditions: -

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing;
- b) Petitioner shall provide her mobile number and also the mobile number of their spouse/surety to the IO concerned, both of which shall be kept in working condition at all times and they shall not change the mobile numbers without prior intimation to the Investigating Officer concerned;
- d) Petitioner shall inform the IO, the address where she shall be available in Delhi;
- e) Petitioner shall not indulge in any criminal activity and shall not



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communicate with or come in contact with the witnesses.

33. The Registry is further directed to communicate this Order to the learned Trial Court and as well as to the concerned Jail Superintendent.

34. Accordingly, the present petition is disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 20, 2024

Signature Not Verified

Digitally Signed By: VIKAS
ARORA

Signing Date: 27.09.2024
00:42:42

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