

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2522 OF 2014

Shri Sandip Ashok Raut ... Applicant

Vs.

The State of Maharashtra ... Respondent

Mr.Ganesh Gole i/b Ms.Rashmi Gagwani for the Applicant
Mr.S.S. Pednekar, APP, for Respondent – State

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **MARCH 25, 2015**

P.C.:

1. This application is moved for bail as the applicant/accused is facing charges under section 20, 22 of the NDPS Act and under section 279 and 427 of the Indian Penal Code as also under section 184 of the Motor Vehicles Act. The offence is registered on 16.5.2014 at the instance of police constable Balasaheb Bhalke at C.R. No.II 38 of 2014 with the Niphad police station, Nashik.

2. It is the case of the prosecution that they had received information of the accident of one tempo and the tempo was carrying cannabis i.e., ganja. On reaching the spot, i.e., near Bhuse, Manjargaon Saikheda Road, Taluka Niphad, Nashik, the police found that the local people had apprehended the applicant/accused, who was the driver of the tempo.

The police seized the material which was transported through the tempo. There were 9 plastic bags stuffed with ganja. The police drew panchanama at the spot and under the panchanama, they seized ganja of 187 kg. The applicant/accused is in the prison since then.

3. The learned Counsel for the applicant/accused has submitted that as per the description in the panchanama, the material which was found and taken in custody as cannabis was ganja. However, the learned Counsel submitted that the material which was found, as per the definition under section 2(iii)(b) of the NDPS Act, 1985, is not ganja. He pointed out that there are no flowering or fruiting tops of the cannabis plants though seeds, leaves and the stalks were found and seized.

4. The learned Prosecutor relied on the seizure panchanama and also on the report of the Chemical Analyser which disclosed that ganja is detected in exhibits 1 to 9 and ganja falls under section 2(iii)(b) of the NDPS Act, 1985. He further submitted that applicant/accused was earlier arrested for similar offence under section 20 of the NDPS Act for transporting ganja and charas.

5. The submissions of the learned prosecutor and the case of the prosecution, as it is taken, shows prima facie, that there is one case

pending against the applicant/accused. However, that has not ended in conviction. The important fact is that whether the articles/material found in the tempo and what was seized under the seizure panchanama by the police in the present case as cannabis is ganja as defined under section 2(iii)(b) of the NDPS Act. Section 2(iii)(b) of the NDPS Act reads thus:

“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; and...”

The C.A. report shows that greenish flowering tops pieces and other material were sent to the C.A. and the report is positive. However, as it is rightly pointed by the learned Counsel for the applicant/accused that in the description of the seizure panchanama, nowhere the police have mentioned that the material found was with flowering or fruiting tops alongwith the seeds, leaves and stalks. It is to be noted that in the definition, the Legislature has specifically excluded seeds and leaves and specifically mentioned that cannabis means fruiting or flowering tops. There may be seeds and other portion of that shrub alongwith the flowering or fruiting tops but the flowering and fruiting top is a necessary ingredient of definition of ganja, i.e., cannabis under the Act.

6. Under such circumstances, the applicant/accused is entitled to bail on the following conditions:

- i) The applicant/accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.25,000/-, with one solvent surety in the like amount;
- ii) The applicant shall not tamper with the evidence;
- iii) The applicant shall not indulge into any kind of offence and especially transportation of ganja or cannabis, while on bail;
- iv) The applicant shall attend on all the Court dates;
- v) In the event of breach of any of the conditions as aforesaid, the bail will be cancelled forthwith.

7. Bail application is disposed of accordingly.

(MRS.MRIDULA BHATKAR, J.)