

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Application No. 3690 of 2016

District : Beed

Chandrakant s/o. Balasaheb Gholve,
Age : 30 years,
Occupation : Labour,
R/o. Ambewadgaon,
Taluka : Dharur,
District : Beed.

.. Applicant.

versus

The State of Maharashtra,
Through Police Station,
Dharur, Taluka : Dharur,
District : Beed.

.. Respondent.

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Mr. Sudarjan J. Salunke, Advocate, for the applicant.

Mr. A.S. Shinde, Addl. Public Prosecutor, for the respondent.

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CORAM : A.M. BADAR, J.

DATE : 8TH SEPTEMBER 2016

ORAL ORDER:

The applicant / accused in Crime No. 19/2016 for offences punishable under Sections 8, 15, 18 and 46 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [For short, "NDPS Act"], registered with Police Station, Dharur, District Beed, at the

instance of Gajanan s/o. Maroti Tadse, Asst. Police Inspector, by this application, is seeking his release on bail.

2. Heard the learned Counsel appearing for the applicant / accused. He submitted that the FIR itself goes to show that the quantity of Ganja seized is not falling under commercial quantity declared by the notification. The learned Counsel further argued that the spot Panchanama itself goes to show that the plants were on Government land and there is nothing to show that the applicant was in possession of the Government land.

3. The learned Addl. Public Prosecutor opposed the application by submitting that there is confessional statement of the applicant and Section 37 of the NDPS Act contains a bar from entertaining the application.

4. Perused the charge-sheet. According to the prosecution case, 41 uprooted Ganja plants were found in Nagzari Shivar at the time of raid by the Police. It is averred that the present applicant was also present at the spot. It is not in dispute that commercial quantity for Ganja is 20 Kgs. or more than 20 Kgs. The term 'Ganja' is defined by Clauses 'b' and 'c' of Sub-section 'iii' of Section 2 of the NDPS Act. It reads thus :-

"(b) *ganja*, that is, the flowering of 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

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom. "

It is thus clear from definition of the term '*ganja*' that Ganja is the flowering of fruiting tops of the cannabis plant, excluding the seeds and leaves when not accompanied by the tops. In the case in hand, as seen from the FIR, what is found was 41 uprooted plants which on weighing found to be 30 Kgs. The investigator had not separated flowering of the fruiting tops of the cannabis plants for its weighing in order to ascertain quantity of Ganja. Therefore, much substance is found in contention of the learned Counsel for the applicant that the Ganja found on the spot was not of commercial quantity.

5. The uprooted trees were found on Government land, as seen from the spot Panchanama.

6. Considering the material available against

the present applicant in the charge-sheet, I am of the opinion that bar of Section 37 of the NDPS Act is not applicable to the case in hand and the applicant is entitled for bail. The charge-sheet does not reflect criminal antecedents, if any, of the present applicant.

7. Hence, I pass the following order :-

(a) The Application is allowed.

(b) The applicant / accused, in the above crime, be released on bail on his executing P.R. Bond in the sum of Rs. 30,000/- and on furnishing one or more solvent sureties of the like amount, on the following conditions :-

(i) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(ii) The applicant shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial against him.

(iii) The applicant shall not repeat commission of

similar type of offences in future.

8. The Application stands disposed of in the
aforesaid terms.

(A.M. BADAR)
JUDGE

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