

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (BA) 626 OF 2018

(Dilip Dedar Pawar & anr..vs.. The State, thr PSO Arni, Dist. Yavatmal)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri M.P. Kariya, counsel for applicants.
Shri N.B. Jawade, APP for non-applicant.

CORAM: ROHIT B. DEO, J.

DATE: 23rd July, 2018.

Heard.

2 The applicants are seeking enlargement on bail in Crime 108 of 2018 registered at Police Station Arni for the offences punishable under section 8(c), 20(c) and 22 of the Narcotic Drugs & Psychotropic Substances Act, 1985 ('NDPS Act' for short).

3 The offences are punishable with minimum imprisonment of ten years which may extend to 20 years.

4 The report is lodged by Santosh Nanwar, PSI, Local Crime Branch, Yavatmal stating that he received secret information that Ganja (Cannabis) was being transported. The necessary formalities were completed and a raiding party was assembled. At 8.05 p.m. four persons on two motorcycles who were carrying sacks were stopped at Kathoda Pardi Beda to Arni road. The members of the raiding party were introduced to the persons who were stopped, statutory safeguards were followed and search was conducted and Ganja weighing 73.700 kg worth

Rs. 5,89,600/- was found in the sacks, samples were drawn and the contraband was seized. The material was then sent to Judicial Magistrate First Class, Arni who issued the inventory certificate on 26.2.2018. In the interregnum, the samples were sent to Forensic Science Laboratory and the analysis confirmed that the sample was Cannabis and therefore, a narcotic substance as defined in section 2(iii)(b) of the NDPS Act.

5 Shri M.P. Kariya, the learned counsel for the applicant has two fold submission to make in support of the application seeking bail. The first submission is that Ganja leaves can not be treated as psychotropic substance. Reliance is placed on the decision of a learned Single Judge of the Karnataka High Court in ***Allabaksh..vs.. State of Karnataka, 2017(2)AKR104*** which holds that Ganja leaves are not covered under the statutory definition of narcotic substance. The second submission is that there is delay in forwarding the sample to the forensic laboratory and the possibility of tampering can not be ruled out.

6 Shri M.P. Kariya, the learned counsel invites my attention to the definition of Ganja in section 2 (iii)(b) of the NDPS Act which reads thus:

2 Definitions – In this Act, unless the context otherwise requires, -

(i).....

(ii).....

(iii).....

(a).....

(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

7 The submission of the learned counsel Shri Kariya that what was seized were leaves without fruiting tops must be rejected, at least at this stage, since the report of the chemical analysis describes the sample as greenish brownish coloured leaves, flowering tops, seeds and stalks and confirms that the sample are Ganja or cannabis. Second submission that there is undue delay in forwarding and testing of the sample is equally untenable. The sample was forwarded on 27.2.2018 and was immediately tested on 27.2.2018 and 28.2.2018. Nothing is brought to the notice of this Court from the chargesheet to suggest that there is any real possibility of tampering with the sample. It may not be appropriate for this Court to record a decisive finding on the twin submissions of Shri M.P. Kariya, since it is ultimately for the trial Court to do so after the evidence is recorded. However, at this stage, there is more than ample material on record to prima facie link the applicants with the crime. The nature of the offence is grave and the punishment severe, the possibility that the applicants may not be available to face the trial, is a real possibility.

8 No case is demonstrated for grant of bail. The application is rejected.

JUDGE

RSB