

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.637 OF 2021

DAGDIRAM S/O. DEVRAO MUNDHE
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Sudarshan J. Salunke.
APP for Respondents: Mr. S.B. Narwade..

with

BAIL APPLICATION NO.598 OF 2021
NATHRAO DEORAO MUNDE
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. M.P. Kale
APP for Respondents: Mr. S.B. Narwade.

CORAM : V.G. BISHT, J.

ORDER RESERVED ON : 10th August.2021
ORDER PRONOUNCED ON : 20th August, 2021.

ORDER:

1] These applications have been filed by the applicants under Section 439 of the Cr.P.C. to enlarge them on bail in connection with Crime No.0157/2020 registered with Police Station, Pimpaldari, Dist. Parbhani under Sections 8(c), 2(A)(B)(1), 20(B)(ii)(c), 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the Act” for sake of brevity).

2] On 6.11.2020, the informant received secret information that the co-accused Nathrao (Applicant in Bail Application No. 598 of 2021) had cultivated “ganja” plant in his agricultural land situated at village Dongar-Jawala. After completing necessary formalities, raid was arranged. Accordingly, on the same day, at about 4.45 p.m., he alongwith others reached the agricultural land. Applicant - Nathrao was present in the field. The fields were having Gat Nos. 64 and 65. During a search, 28 plants of Ganja were found in Gat No.64, whereas, 26 plants were found in Gat No. 65. Those plants were uprooted and seized. It was alleged that total weight of plants seized from the agricultural land of accused Nathrao was 138.5 Kg.

3] While the raid was on, the informant received information that field of Dagdiram Deorao Mundhe (applicant in Bail Application No. 637 of 2021) whose agricultural land was situated adjacent to the land of Nathrao, had also cultivated Ganja plants. Accordingly, raid was conducted and 35 plants of Ganja were seized. The said plants weighed about 31 kgs. Accordingly, an FIR came to be lodged.

3] Mr. Sudarshan Salunke and Mr. Kale, learned counsel for the respective applicants, vehemently submitted that as per the definition of “ganja” given in Section 2(b)(c) of the Act, “ganja” is defined as “the flowering of fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops)” and “any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom”. The learned counsel heavily assailed the approach of the prosecution by contending that the entire plants which were allegedly found in the field of the applicants were weighed without adhering to the definition of “ganja” as given in Section 2(b)(c) of the

Act, 1985. Needless to say, according to learned counsel, the entire plants of cannabis i.e. the stem, branches, leaves, roots do not constitute the term “ganja” as per the said definition clause. The learned counsel also invited my attention to the CA report, which also shows that the entire plants of ganja were sent to the Chemical Analyser for the purpose of analysis. It also goes to show that the flowering or fruiting tops of cannabis plant was not separated from the plants. Even the seizure panchanama dated 6.11.2020 would show that the plants which were uprooted were 3 to 4 feet in height and were weighed in toto. In such circumstances, according to learned counsel, the rigour of Section 37 of the NDPS Act will not come to the rescue of the prosecution.

4] The learned counsel for applicants lastly submitted that the applicants will be available for trial. There is no possibility of tampering the witnesses, inasmuch as, all the witnesses are from the police department. Therefore, the applicants be enlarged on bail, urged learned counsel.

5] Mr. Narwade, learned APP, on the other hand, invited my attention to the Inventory Certificate prepared by the Judicial Magistrate First Class (Court No.2) Gangakhed, and forcefully submitted that the applicants were found in possession of “ganja” of commercial quantity and, therefore, they should not be enlarged on bail, in the light of Section 37 of the NDPS Act.

6] Perused the investigation papers made available on record in the form of charge-sheet and other documents, including the Inventory Certificate relied on by the learned APP.

7] There is no dispute that the “commercial quantity” in relation to NDPS Act for “ganja” means, any quantity greater than 20 kgs. Then, Section 2(b)&(c) defines, “ganja” as 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 any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom.

8] The definition of term “ganja” makes it clear that “ganja” is the flowering or fruiting tops of 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 that 28 plants of ganja from Gat No.64 and 26 plants were found from Gat No.65, weighing about 138.5 kgs and 35 plants of ganja were found from the field of applicant Dagdiram weighing 31 kgs. There is nothing on record to prima-facie show that before carrying weight of the seized plants of ganja, the investigator had separated the flowering or fruiting tops of cannabis plant in order to ascertain the quantity of ganja. This fact becomes further clear from the Inventory Certificate prepared by the JMFC, Court No.2, Gangakhed on 11.9.2020. Para. Nos. 3,7,9 and 11 thereof would show that the cotton bags were containing grassy black and greenish leaves/twigs with their respective weights. This inventory certificate also does not show that flowering or fruiting tops of the plant were in any manner separated in order to ascertain the correct quantity of ganja. So is the case with CA reports, where, the samples itself were sent for analysis.

9] As an off-shoot of the above, I note debilitating defects in the prosecution case. I am clear in my mind as to the inapplicability of Section 37 of the NDPS and hold that applicants have made out a case

for bail.

10] For all the aforesaid reasons, I pass the following order :-

: O R D E R :

[a] The applications are allowed.

[b] The applicants be released on bail in connection with Crime No.0157/2020 registered with Police Station, Pimpaldari, Dist. Parbhani under Sections 8(c), 2(A)(B)(1), 20(B)(ii)(c), 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on their executing PR bond in the sum of Rs. 25,000/- each, and on furnishing one or more sureties in the like amount, on the following conditions :-

[i] The applicants shall not, directly or indirectly, make any inducement, threat or promise to any person 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 applicants shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial against them.

[iii] The applicants shall not indulge in similar type of offences in future.

[c] Bail before trial court.

[d] The applications stand disposed of in aforesaid terms.

**[V.G. BISHT]
JUDGE.**

grt/-