

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 BAIL APPLICATION NO.968 OF 2021

RAVINDRA BABRU @ BABRUWAN WAGHMODE

VERSUS

THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Patil Amarjeet V.

APP for Respondents-State: Ms. Vaishali Patil Jadhav.

...

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 08-12-2021

PER COURT :

1. By this application, the applicant seeks bail under Section 439 of the Code of Criminal Procedure. He has been arrested in Crime No.217 of 2020, registered with Dhoki Police Station, Taluka and District Osmanabad, for the offence punishable under Section 20 (b) and 29 of the Narcotic Drugs and Psychotropic Substances Act (In short 'NDPS Act')
2. After giving prosecution story and taking this Court through First Information Report, learned Advocate for the applicant vehemently

submitted that in the First Information Report as well as the charge-sheet wherein statement of the accused is recorded, it shows that he had no knowledge about the contents of gunny bag. In fact, even it is the prosecution story that the gunny bag along with its contents belong to accused No.2 Achut Prabhu Pawar who is stated to be absconding and the charge-sheet has been filed under Section 299 of the Code of Criminal Procedure against him. Further, as per the prosecution story, what has been seized is 32.383 Kg. Ganja, however, the description that has been given in the panchanama would shows that it contain not only flowering tops but also the stems, leaves etc. Whatever weight that has been given is in respect of all i.e. the stems, leaves and alleged to be the flowering tops. He relied on the decision in *Hari Mahadu Valse vs. State of Maharashtra, Bail Application No.2299 of 2019, decided by Principal Seat on 29-07-2021*, wherein it has been observed that :-

“The panchanama *prima facie* reveals that seized material contained green leaves, flower bud and seeds, which were weighing approximately 71 Kilo 190 Grams.”

It was then observed that,

"The Chemical Analysis report reveals the material forwarded for analysis contained flower buds with pieces of stalks, stems, leaves and seeds without quantifying the weight of flower tops."

Therefore, a doubt was raised as to whether the Ganja seized from the ware house of the accused was of commercial quantity. The bail was granted in that case. The learned Advocate for the applicant further submits that since the applicant was unaware about the contents of the gunny bag and which admittedly belong to accused No.2, the applicant who is aged 35 at this stage is in jail since 14-08-2020, needs to be released on bail.

3. Per contra, the learned APP strongly opposed the application by submitting that the quantity which has been seized from accused is commercial quantity and he had knowledge about the contents of the gunny bag. He received amount for that transportation. Under such circumstances, when the Chemical Analysis report in this case clearly states that Ganja is detected in the exhibit, applicant deserves no sympathy.

4. Here, the applicant has been arrested for the offence

punishable under Section 20 (b) and 29 of NDPS Act. Section 20 (b) of NDPS Act runs thus :-

“(b) produces, manufactures, posses sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable,.....”

And Section 29 of NDPS Act prescribes for punishment for abetment and criminal conspiracy. The Narcotic Drug which is involved in this case, is Ganja and Section 2 (iii) (b) gives its definition which runs thus :-

“(iii) “cannabis (hemp) means –

(a).....

(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..”

Thus, it is to be noted that ganja is made part of the drug cannabis (hemp) and then Section 2 (iv) defines :-

“(iv) “Cannabis plant” means any plant of the genus cannabis”

If we consider Section 20 (b) of the NDPS Act, it respects itself

basically to produces, manufacturers, possesses sells, purchases, transports, imports inter-State, export inter-State or uses cannabis. The schedule/table attached the NDPS Act quantifies the drugs into small quantity and commercial quantity. Entry 55 is in respect of Ganja and the small quantity is up to 1000 Grams and the commercial quantity is 20 Kilograms. Now coming back to Section 20 (b) (ii) (B) of the NDPS Act prescribes for punishment when the contravention relates to quantity lesser than commercial quantity but grater than small quantity, and the punishment prescribed is, rigorous imprisonment for a term which may extent to ten years and with fine which may extent to Rs.1 lakh. Important point to be noted is that the fact remains that the Ganja was seized. Now accused has not come and cannot even come with a case that if the flowering tops are removed from the stems and other pieces including the stems, leaves etc., would come down to small quantity. Even for the sake of arguments we consider that it would come to small quantity, yet in view of the decision in *Reha Chakraborty vs. Union of India*, reported in 2021 Cri.L.J. 248, this Court (Principal Seat) held that second schedule of Code of Criminal Procedure will not be applicable, but the offence would be non-bailable. Under such circumstances, when in *Hari Mahadu Valse (Supra)* the offences

were 8 (c) and 20 (C) of NDPS Act and the observations were based on the ingredients of that offence, benefit of those observations cannot be given to the present applicant.

5. As regards the knowledge is concerned, what has been stated in the panchanama and the First Information Report is that when option was given to the applicant that whether he want to have personal search in presence of Magistrate, he refused and permitted the raiding party to conduct his personal search and gave that consent in writing. Whether that writing is admissible in evidence, will have to be considered at the time of trial. But then in the First Information Report as well as in the panchanama, it has been mentioned that after it was revealed that the gunny bag contains Ganja, inquiry was made with the applicant and then he disclosed that one Achut Pawar, resident of Ter Pardhipidi, told him that a gunny bag of Ganja has been kept by road near Rui Pati and he should bring it. For that purpose he gave amount of Rs.3000/- to the applicant. It was told by said Achut Pawar to the applicant that the said gunny bag should be brought to his house. This statement which is the *prima facie* material on record shows that applicant had knowledge about the contents of the gunny bag. It is also to be

noted that for bringing that gunny bag, he was paid Rs.3000/-.

6. The applicant has not raised point in respect of any lacuna in the personal search, that is Section 50 of the NDPS Act. Therefore, taking into consideration the evidence that is against he present applicant, no case is made out for releasing him on bail. Hence, application stands rejected.

7. It is clarified that the observations made in the order are limited for deciding this application and the Trial Court should not get influence in respect of those observations and decide the matter on its merits after the evidence is led.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.