

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.590 of 2021

Kallappa Irappa Biradar	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

...

Mr. Umesh Mankapure for the applicant.
Mr.A.K. Kapadnis, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 20th AUGUST, 2021

P.C:-

1 The applicant is charge-sheeted in C.R.No. 69 of 2020 for the offence punishable under Section 20(b), 22 and 8(c) of NDPS Act, and being arrested on 6th October 2020, he seek his release on bail.

2 The foremost ground on which the bail is sought is, the ganja seized and sent for panchnama is not the flowering or fruiting but the entire plant has been seized and this do not fall within the purview of ganja as defined in Section 2(ii)(b) of the NDPS Act.

3 With the assistance of learned counsel for the applicant and the learned APP, I have perused the entire charge-

sheet which include the panchnama. On information received about cultivation of ganja in sugarcane crop on the field of the applicant, the raiding team arrived in the field situated at Gut No. 529, Taluka Umrani which is cultivated by the present applicant. In the sugarcane crop which was cultivated, *ganja* plants with 3 to 7 ft in height were found and when the leaves of the plants were crushed, it smelt like ganja. All the plants were thereafter uprooted and filled in 16 different plastic sacks which was weighed and found to be measured 147.7 kgs with valuation of Rs.8,86,200/-. The samples to the effect of 102 gms were drawn and placed in a brown colour bag and remaining ganja was filled in 16 sacks and came to be sealed. The muddemal pavti also record presence of green colour ganja leaves with pungent smell on the plants with height of 3 to 7 ft, packed in the sacks.

4 The charge-sheet compile statements of the persons present in the raiding part and unequivocally, they speak of uprooting of ganja plants and its weight being 147.7 kgs.

5 The NDPS Act aim to regulate and control operations relating to Narcotics Drug and Psychotropic Substances and prevent its illicit traffic. Chapter III of the said Act enumerate provisions for Prohibition, Control and Regulation of Narcotics Drug and Psychotropic Substance. The definition clause spell various such substances and Section 2(iii)(b) describe 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. 'Cannabis Plant' is defined to mean any plant of the genus cannabis.

Section 8 prohibit certain operations being described as under :-

a) cultivate any coca plant or gather any portion of coca plant;

or

(b) cultivate the opium poppy or any cannabis plant;

or

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder.

6 The Act also define the term 'manufacturing' in Clause-xx and define 'production' in Section 2(xxii) to mean the separation of opium of opium, poppy straw, coca leaves or cannabis from the plants from which they are obtained. The applicant is charged under Section 8(c) which prohibit production, manufacturing, possession, sale, purchase, transportation, warehousing, concealment, use or consumption,

import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances, in contrast to clause (b) which prohibit cultivation of opium, poppy or any cannabis plant.

7 The panchnama reveal the ganja plant with leaves and seeds with a strong fragrance. The plants were in the height of 3 to 7 ft and the entire full length plants which were uprooted came to be weighed and found to be 147.7 kgs. The samples came to be drawn from the full quantity and muddemal refer to the plants with green colour leaves having pungent smell being 3 to 7 ft in height. There is no mention of flowering or fruiting part, which make it apparent that the plant had attained the flowering stage and what was present was only the leaves and seeds and the entire plant in an uprooted condition.

When the definition of *ganja* under 2(d) is perused, it is the flowering or fruiting tops of the cannabis plant to the exclusion of the seeds and leaves when not accompanied by the tops which amount to ganja. Therefore, the presence of seeds and leaves of the cannabis plant which has been seized cannot amount to ganja since the plants were not bearing the flowering or fruiting tops. The complaint, as a whole do not attract the definition of the term 'ganja' since in order to attract the said term, it must fall within the scope of 2(iii)(b), which make it very clear that when seeds and leaves are not accompanied by the top,

it will not amount to Ganja, with the conspicuous absence of the flowering or fruiting tops.

8 Pertinent to note that the applicant is not charged under Section 8(b) i.e. for cultivation of cannabis plant but the charge is specifically under Section 8(c) and particularly, when the substance seized do not fall within the meaning of Narcotics Drugs i.e. Ganja, the applicant seek his release on bail.

9 It is significant to note that the definition of '*ganja*' under NDPS Act takes in its ambit only the flowering and fruiting top of the cannabis plant, excluding the seeds and leaves, when not accompanied by the tops. The definition of Ganja is thus restricted and legislature has not intended to bring within its fold the seeds and leaves of Ganja plant when not accompanied by the flowering or fruiting tops. The panchnama and the seizure do not reflect presence of flowering or fruiting tops on the plants.

10 Another aspect of the matter is whether the applicant could be said to have been charged for dealing in commercial quantity of the contraband. The Act prescribes three quantities being small quantity, intermediate quantity and commercial quantity. As far as ganja is concerned, the small quantity in terms of the notification determining the quantity, small quantity prescribed is 1000 gms, whereas 20 kgs is the commercial quantity. The panchnama reveal that the whole plant of ganja has

been weighed, including the leaves and the stem. Though the panchnama do not reveal that flowering or fruiting part was accompanying the cannabis plant and if it was so, the said part of cannabis plant which amount to ganja, would be required to be weighed separately and in that contingency, the seized quantity should have amounted to a commercial quantity. The inventory certificate mention of the plants of Ganja to which brownish and greenish colour leaves, green seeds, brownish stem is appended. If at all the seed was to be counted as a fruiting part, it ought to have been excluded and weighed separately to measure the quantity of ganja.

In any case, the applicant is charged with Section 8(c) and *prima facie* the material compiled in the charge-sheet fail to establish that the alleged prohibited substance is ganja, since it do not adhere to the definition of 'ganja' under the NDPS Act Tetrahydrocannabinol is the principal psychoactive constituent of cannabis, unless the substance is decided to be possessing psychoactive constituent in the prescribed preparation, it cannot be classified as a Narcotic Drug. Since the only flowering and fruiting tops of the cannabis plants are classified as ganja, in absence of the said substance being seized from the applicant, *prima facie*, he cannot be made liable for the charges. There is no ground for believing that applicant is guilty of offence, for the aforesaid recorded reasons. The applicant is entitled of being released on bail. Needless to say that the observations made are

relied on decision of the present application and the trial Court will not be influenced by the said observation during the course of trial. Hence, the following order :-

ORDER

- (a) Application is allowed.
- (b) The Applicant Kallappa Irappa Biradar in connection with C.R.No. 69 of 2020 registered with Jath Police Station, Sangli shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The applicant shall report to the concerned police station once in three months on 1st Saturday of month between 11.00 am to 1.00 p.m.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

SMT. BHARATI DANGRE, J