

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1069 OF 2020

DHANANJAY BABASO SHINDE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.U. R. Mankapure, Advocate for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 15th NOVEMBER 2021
PRONOUNCED ON : 17th NOVEMBER 2021**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.250 of 2020 registered with Police Station Rajarampuri, Kolhapur, for offences punishable under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act).

2 It is the case of prosecution that on 19th June 2020 the Officers of Rajarampuri Police Station received a secret information that a person is bringing narcotic drug viz. ganja for sale at Shenda Park. Accordingly, a trap was arranged and the applicant was arrested. The applicant was found in possession of ganja to the tune of 20.400 kgs worth Rs.6,52,800/-. First Information Report (FIR) accordingly came to be registered.

3 Mr.Mankapure, learned counsel for the applicant, submits that on perusal of the charge-sheet itself it is difficult to establish that the said alleged contraband would fall within the four corners of “ganja” as defined under Section 2(b) of the NDPS Act. According to the learned counsel the investigation is concluded and the charge-sheet has been filed. The trial is not likely to conclude in the near future. Under such circumstances, the application deserves to be allowed. The learned counsel also placed reliance on **Laxman Shankar Ghankute vs. State of Maharashtra¹**, **Kallappa Irappa Biradar vs. State of Maharashtra²**

1 Criminal Bail Application No.2583 of 2019 dated 23rd June 2021

2 Criminal Bail Application No.590 of 2021 dated 20th August 2021

and **Hari Mahadu Valse vs. State of Maharashtra**³.

4 Mr.Dedhia, learned APP, on the other hand, vehemently opposed the submissions by contending that the accused was found in possession of 20.400 kgs which was commercial quantity and having regard to the seriousness of the offence, the application is required to be rejected.

5 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.

6 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

³ Criminal Bail Application No.2299 of 2019 dated 29th July 2021

above forms of cannabis or any drink prepared therefrom.

7 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 20.400 kgs. of “ganja”. However, Certificate of Inventory in respect of seized muddemal as per Section 52(A)(3) of NDPS Act shows that the gunny bag weighed 20.485 kgs. and contained greenish black coloured leafy like substance along with stems and little white coloured flowering buds. It appear that then two envelopes of same size labeled a “A” and “B” were sealed. They weighed 0.015 kg. When the said envelopes were opened, it was found containing greenish black coloured leafy substance along with stems and little white coloured flowering buds.

8 The above state of affairs would make it clear that there is nothing on record to prima facie show that before carrying weight of the seized plant of ganja, the Investigator had

separated the flowering or fruiting tops of cannabis plant in order to ascertain the exact quantity of ganja. This fact becomes further clear from the said Inventory Certificate prepared by 7th Joint Judicial Magistrate, First Class, Kolhapur, on 23rd June 2020. The 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. No Chemical Analyzer's Report is forthcoming to show otherwise. In the case of **Laxman Shankar Ghankute (supra)** this Court on perusal of material on record found that what was seized was only plants and there was no quantification of flowering tops and therefore, the Court was doubtful whether the quantity can be said to be commercial. Similar observations were made in the orders in **Kallappa Irappa Biradar (suipra)** and **Hari Mahadu Valse (supra)**.

9 As an offshoot 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 Act and hold that the

applicant has made out a case for bail.

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

ORDER

- (i) The application is allowed.
- (ii) Applicant – Dhananjay Babaso Shinde shall be released on bail in Crime No.250 of 2020 registered with Police Station Rajarampuri, Kolhapur, on his executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.
- (iii) The applicant 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 him from disclosing such facts either to the Court or to any Police Officer.

- (iv) The applicant shall not tamper with prosecution evidence in any manner and shall co-operate the learned trial Judge in expeditious disposal of the trial against him.
- (v) The applicant shall not indulge in similar type of offences in future.
- (vi) Bail before trial Court.
- (vii) The application stands disposed off in aforesaid terms.

(V. G. BISHT, J.)