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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 196 OF 2021

Santosh Sambhaji Todkar ...Applicant
Versus
State of Maharashtra ...Respondent

**WITH
BAIL APPLICATION NO. 1796 OF 2021**

Sudam Kakaso Babar ...Applicant
Versus
The State of Maharashtra ...Respondent

.....
Mr. Ganesh Gole i/b. Mr. Ateet Shirodkar for the Applicant in
BA No. 196 of 2021.
Mr. Vijay Killedar for the Applicant in BA No. 1796 of 2021
Mrs. Anamika Malhotra, APP for the Respondent -State.
.....

CORAM : V.G.BISHT, J.
RESERVED ON : 6TH DECEMBER, 2021
PRONOUNCED ON : 15TH DECEMBER, 2021

PC:-

1. The present applications have been moved by the applicants under Section 439 of the Code of Criminal Procedure in Crime No. 734 of 2020 registered with Islampur

Police Station, Sangli for offences punishable under Sections 8, 20 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “The NDPS Act”).

2. Briefly stated the case of prosecution is that, on 19th October, 2020, the applicant Sudam Kakaso Babar was found in possession of 4.50 kgs Ganja without any license. Similarly, on 20th October, 2020, the applicant Santosh Sambhaji Todkar was also found in possession of 166.11 kgs without any license. Accordingly, the First Information Report (FIR) came to be lodged.

3. Mr. Gole, learned Counsel for the applicant in Bail Application No. 196 of 2021, submits that description of the contraband in the spot panchnama and chemical analyzer’s report is quite contrary. If the chemical analyzer’s report is to be seen carefully, then it is difficult to establish that what was found was the alleged contraband as defined under Section 2 (b) of the NDPS Act. Moreover, investigating is completed and the charge-sheet has been filed. No purpose would be

served by keeping the applicants behind the bars.

4. Mr.Killedar, learned Counsel for the applicant in Bail Application No. 1796 of 2021, submits that he was allegedly found in possession of the contraband, which was less than commercial quantity and then learned Counsel adopted the submissions advanced by Mr. Gole.

5. Mrs.Malhotra, learned APP, on the other hand, submits that applicant Santosh Sambhaji Todkar was found in possession of huge quantity of illegal contraband. The offence being of serious nature, the applicants do not deserve to be enlarged on bail.

6. Perused investigation papers including the chemical analyzer report. Although from the seizure panchnama dated 19th October, 2020, it appears that the applicants were found in possession of wet ganja weighing 2.10 kgs and 166.11 kgs but the chemical analyzer's report filed today itself presents different picture. The chemical analyzer report shows the

description of the article contained in parcel/s : that the articles were containing flowering fruiting tops with greenish leaves and stalks in 79 separate polythene bags.

7. *Prima facie*, it suggests that investigator had not separated the flowering and fruiting tops of the cannabis plant in order to ascertain the exact quantity of ganja and this is what the findings of the chemical analyzer report.

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 4.50 kgs and 166.11 kgs. of “ganja”. However, the Chemical Analyzer’s Report shows that description of the article contained in parcel/s that the articles were containing flowering tops mixed with pieces of stalks, stems, leaves and seeds.

9. In the case of **Shri. Sandip Ashok Raut vs. The State of Maharashtra**¹, this Court had also taken into consideration definition of ganja under Section 2(iii)(b) of the NDPS Act and also found that Chemical Analyzer's Report showed the description of material along with seeds, leaves and stalks. Similar observation was made in case of **Hari Mahadu Valse vs. State of Maharashtra**².

10. 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 applicants have made out a case for bail.

11. For all the aforesaid reasons, I pass the following order :

ORDER

(i) The applications are allowed.

(ii) Applicant – Santosh Sambhaji Todkar shall be released on bail in Crime No. 734 of 2020 registered with Islampur Police Station, Sangli,

1 Bail Application No. 2522 of 2014 dated 25th March, 2015

2 Criminal Bail Application No. 2299 dated 29th July, 2021.

on his executing P.R. Bond in the sum of Rs.25,000/- with one or two surety/ sureties in like amount.

(iii) Applicant – Sudam Kakaso Babar shall be released on bail in Crime No. 734 of 2020 registered with Islampur Police Station, Sangli, on his executing P.R. Bond in the sum of Rs.25,000/- with one or two surety/ sureties in like amount.

(iv) 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.

(v) The applicants shall not tamper with prosecution evidence in any manner and shall co-operate the learned trial Judge in

expeditious disposal of the trial against them.

(vi) The applicants shall not indulge in similar type of offences in future.

(vii) Bail before trial Court.

(viii) The applications stand disposed off in aforesaid terms.

(V.G.BISHT, J.)

