

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.459 OF 2021

SANJAY MOHAN GARAD

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Piyush Toshnival a/w. Mr.Aniket Nikam i/b. Mr.Vivek Arote,
Advocate for the Applicant.

Mr.A.A.Palkar, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

RESERVED ON : 16th NOVEMBER 2021
PRONOUNCED ON : 23rd 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.326 of 2019 registered with Police Station Dighi, Pune,
for offences punishable under Section 8(c), 20(b)(ii)(c) and 29

of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act).

2 It is the case of prosecution that on 22nd May 2019 the present applicant along with other accused namely Amol Rambhau Aagale and Rambhau Ghanshyam Aagale were found carrying illegally 149.304 kgm of ganja in Ford Fiesta Car bearing Registration No.MH-14-AM-6959 worth Rs.39,82,550/-. It may be noted that the present applicant was the driver of the said car and as far as the remaining two accused are concerned, ganja was found below their seats. Accordingly, First Information Report (FIR) came to be lodged.

3 Mr.Piyush Tosnival, learned counsel for the applicant, submits that as far as the present applicant is concerned, he was only driver of the vehicle and it is not the case of prosecution that he was found in conscious possession of ganja. Besides, if the panchnama and the Chemical Analyzer's Report are seen, then it is difficult to establish that what was found was the alleged

contraband as defined in Section 2(b) of the NDPS Act. The learned counsel also placed reliance in **Shri. Sandip Ashok Raut vs. The State of Maharashtra**¹ and **Hari Mahadu Valse vs. State of Maharashtra**².

4 Mr.A.A.Palkar, learned APP, on the other hand, opposed the submissions by contending that the applicant was having knowledge that the remaining accused were carrying ganja and thus, his role was that of an abettor in the light of Section 29 of the NDPS Act. There being no merit in the application, the same is liable to be rejected.

5 Perused the investigation papers including the Chemical Analyzer's Report. Although from Seizure Panchnama it appears that the seeds and flowering tops were seized, from page 126 of the Chemical Analyzer's Report altogether a different story appears. It shows the description of the article contained in parcel/s that the articles were containing flowering tops mixed

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

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

with pieces of stalks, stems, leaves and seeds. Prima facie, it suggests that the 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 very much clear from the Chemical Analyzer's Report.

6 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 149.304 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.

7 In the case of **Shri. Sandip Ashok Raut (supra)** 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 the order in **Hari Mahadu Valse (supra)**.

8 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.

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

ORDER

- (i) The application is allowed.

- (ii) Applicant – Sanjay Mohan Garad shall be released on bail in Crime No.326 of 2019 registered with Police Station Dighi, Pune, 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.)