

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1903 OF 2021

Bandu A. More

.. Applicant

Versus

The State of Maharashtra

.. Respondent

...

Mr.Kishor S. Patil with Mr.Dilip Shinde for the applicant.
Mr.A.R. Kapadnis, APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 12th AUGUST, 2021

P.C:-

1 The applicant arraigned as Accused No.1 in C.R.No. 324 of 2020 with Madha police station, on completion of investigation is charge-sheeted under Section 8(c), 20(b) and 22 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'). By the present Application, he seek his release on bail with a submission advanced that since the material seized from him do not fit within the purview of NDPS Act and the allegation that he is found with the alleged contraband which is a commercial quantity is obliterated, he is entitled to be released on bail.

2 The concerned C.R. came to be registered at the instance of Police Head Constable, Madha police station, who received information that the two accused persons have cultivated *ganja* trees in their field, pursuant to which the raiding team along with the photographer and panchas approached the spot. When they approached one field, in regard to which information was received, the applicant was found in his field where he had cultivated split pigeon peas. He identified himself and admitted that the said field admeasuring two and half acres stand in his name. On gaining entry in the field, the plants of *ganja* were found, being cultivated amongst the split peas and plants were described as green in colour with soggy leaves, having pungent smell with their height varying between 2ft to 5 ft. On crushing the leaves, it was smelling like *ganja*. On the instructions of the head of the raiding team, the plants of *ganja* came to be uprooted and were measured on the weighing scale and found to be weighing 38.6 kgs. It was approximated to be worth Rs.1,93,000/-.

3 Since the standing plants were uprooted, for the purpose of sample, the branches from the plant were plucked and sealed in two brown colour envelopes. The remaining plants were put in sack and sealed. Further, the FIR also mention the raid being conducted in the field of one Jarichand Kumbhar – accused no.2, who was found to be cultivating the *ganja* and by uprooting the plants in his field, the panchnama was prepared.

4 The panchnama under the signature of two panchas and the ASI, Madha Police Station record the occurrence in sync with the complaint and in detail, describe the manner in which the samples were drawn and the weight of *ganja* trees calculated. During investigation, statement of the team members as well as the panchas were recorded. An inventory certificate is issued by the JMFC, Madha, Solapur on 4th November 2020. The bags of the alleged contraband *ganja* on being produced before him, the certificate state certify as under :-

“All the plastic bags came to be opened before me. It contains Plants of Ganja, to which there are brownish and greenish coloured leaves, green seeds, brownish stems and roots. All the leaves, seeds, roots and stems are damp. All the plastic bags containing Ganja was weighed by keeping on electronic machine”.

The certificate contain a mention of 8 bags which were weighed and which came to be re-sealed subsequently.

5 In connection with the said C.R, the applicant came to be arrested On 2nd November 2020 and since then, he remain incarcerated. Co-accused Jarichand Kumbhar is already released on bail. Though the sample drawn from the seized substance is forwarded for analysis, the report is not yet made available till hearing of the application.

6 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.

7 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.

8 The panchnama executed resulting into seizure of the alleged substance projected as 'ganja', on an attentive reading would reveal that the plants of ganja wee found to be planted in the field of the applicant, amongst the plant of split peas, which were emanating strong fragrance. The plants ranging were between 2 to 5 feet in height and its leaves were crushed and sniffed, smelt like ganja. The entire full length plants which were uprooted, were weighed on the weighing machine and it is alleged that it was weighed 38.6 kgs. The sample of 250 gms is drawn by plucking branches from the plant. The inventory certificate reveal that the plastic bags contain the plants of ganja with brownish, greenish colour leaves, green seeds, brownish stems and roots. There is no mention of the flowering or of the

fruits of the cannabis plant. It is apparent that the ganja plant did not attain the flowering stage and the panchnama clearly reflect that what was present was the leaves, the stem and the roots of the plant along with seeds. Flowering of fruiting tops of the cannabis plant is not seized and what is seized is the entire plant of Ganja.

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.

9 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.

10 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 hold 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.

11 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 Bandu Audumbar More in connection with C.R.No. 324 of

2020 registered with Madha Police Station, Solapur 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