

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1599 OF 2020

SURESH MARUTI PAWAR

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

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 : 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.1038 of 2019 registered with Police Station Chakan, Pune, for offences punishable under Section 8(c) and 20(B)(ii) (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

2 It is the case of prosecution that on 16th July 2019 while the teams of Anti-Narcotics Cell and the Chakan Police Station were patrolling in the area within the jurisdiction of Chakan Police Station, they came across the applicant who was holding two white gunny bags in his hands. Since the movements of the applicant were suspicious and on seeing the patrolling team, the applicant left the said gunny bags and attempted to escape from the spot, he was apprehended. After complying with necessary formalities, search was taken and it was found that the said two gunny bags contained around 42.996 kgs of ganja. Thereafter, after following requisite procedure for search and seizure under the NDPS Act, the said contraband came to be seized. Samples were drawn and First Information Report (FIR) came to be lodged.

3 Mr.Aniket Nikam, learned counsel for the applicant, submits that there is no reference to flowering tops of the ganja plant in the FIR and rather it shows that the ganja plant was

seized along with leaves and stems. The learned counsel also invited my attention to the Chemical Analyzer's Report containing description of articles contained in the parcel and it shows that Exhibit Nos.(1) and (2) Yellowish green coloured flowering fruiting tops mixed with pieces of stalks, stems, leaves and seeds were wrapped in polythene bag. Thus, according to the learned counsel, what was sent to the Forensic Science Laboratory was flowering fruiting tops along with pieces of stalks, stems, leaves and not the fruiting tops separately, after taking its weight. Thus, it cannot be said that what was seized by the prosecution was alleged contraband falling within the four corners of "ganja" as defined under Section 2(b) of the NDPS Act.

4 The learned counsel then next contended that the investigation is concluded and the charge-sheet has been filed and it may take considerable time to conclude the trial. In the circumstances, the application deserves to be allowed.

5 The learned counsel placed reliance on **Shri Sandip Ashok Raut vs. The State of Maharashtra¹** and **Hari Mahadu Valse vs. The State of Maharashtra²**.

6 Mr.Palkar, learned APP, on the other hand, opposed the submissions by contending that accused was found in possession of commercial quantity of ganja. Since offence in question is serious one, the application is required to be rejected.

7 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 above forms of cannabis or any drink prepared therefrom.

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

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

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, it appears 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 is the case with Chemical Analyzer’s Report also where the sample itself including pieces of stalks, stems, leaves and seeds were send for analysis.

9 In the case of **Sandip Ashok Raut (supra)** this Court found from the Seizure Panchnama that it was nowhere disclosed that the material found was with flowering or fruiting tops along with seeds, leaves and stalks. Then this Court referred to the definition of cannabis and opined that flowering or fruiting top is a necessary ingredient of definition of ganja i.e. cannabis under the Act.

10 Similarly, in the case of **Hari Mahadu Valse (supra)** after going through the Chemical Analyzer's Report this Court noted that the analysis contained flower buds with pieces of stalks, stems, leaves and seeds, without quantifying the weight of flower tops. According to this Court, prima facie, it raises a doubt whether the ganja seized from the warehouse of the accused was of commercial quantity as to attract the provisions under Section 20(C) of the NDPS Act.

11 I have already explained the shortcomings of the case in hand which is similar to above noted observations of this Court in the orders referred supra.

12 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.

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

ORDER

- (i) The application is allowed.

- (ii) Applicant – Suresh Maruti Pawar shall be released on bail in Crime No.1038 of 2019 registered with Police Station Chakan, 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.)