

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3035 OF 2021

TANAJI JAGANNATH SHINDE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Balwant Salunkhe, Advocate for the Applicant.

Smt.PP.Shinde, 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.152 of 2021 registered with Police Station Jath, Sangli, for offences punishable under Section 8(C), 20(B), 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

2 It is the case of prosecution that informant and other police staff were on patrolling duty on 31st March 2021. They received secret information that applicant has illegally cultivated ganja in his land at Village Shegaon. Accordingly, they raided the field of applicant bearing Gat No.1589 and applicant was also found present there. After verifying from the Talathi about the land record, they found plants of ganja having 3 to 5 feet height. The plants were uprooted and put in bags in the presence of panch witnesses. The plants were weighing around 21.5 kgs. After completing the necessary formalities First Information Report (FIR) came to be lodged.

3 Mr.Salunkhe, learned counsel for the applicant, submits that there is material inconsistency between the quantity found in the field and reflected through the FIR and as mentioned in the Inventory Certificate prepared by the learned Judicial Magistrate, First Class, Jath, District Sangli. Moreover, according to the learned counsel, the entire plants which were allegedly found in the field of applicant were weighed without

adhering to the definition of “ganja” given in Section 2((b)(c) of the NDPS Act. In such circumstances, according to the learned counsel, the rigours of Section 37 of the NDPS Act will not come to the rescue of the prosecution.

4 Smt.Shinde, learned APP, on the other hand, invited my attention to the Inventory Certificate prepared by learned Judicial Magistrate, First Class, Jath, on 5th April 2021 and forcefully submitted that the applicant was found in possession of ganja and therefore he should not be enlarged on bail.

5 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.

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 21.5 kgs of ganja. However, Certificate of Inventory in respect of seized muddemal as per Section 52(A)(3) shows that there were in all four parcels (P1 to P4) containing 2.770 kgs, 2.835 kgs, 3.400 kgs and 3.835 kgs totalling to 12.840 kgs. Apparently, there is material difference in the quantity what was found as per the FIR and what was certified in the Inventory by the learned Judicial Magistrate, First Class, Jath, Sangli on 5th April 2021. This is one serious infirmity.

7 There is nothing on record to prima facie show that before carrying weight of the seized plants of ganja, the Investigator had separated the flowering or fruiting tops of cannabis plant in order to ascertain the exact quantity of ganja. No Chemical Analyzer’s Report is forthcoming to show otherwise.

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 – Tanaji Jagannath Shinde shall be released on bail in Crime No.152 of 2021 registered with Police Station Jath, Sangli, 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.)