

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

CRIMINAL BAIL APPLICATION NO. 2583 OF 2019

Laxman Shankar Ghankute

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Raju L. Mate for the Applicant

Mr. S. V. Gavand, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.
(THROUGH VIDEO-CONFERENCING)
WEDNESDAY, 23rd JUNE 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 193 of 2017 registered with the Junnar Police Station, Pune (Rural), for the alleged offences punishable under Sections 20(a)(i) and 46 of the Narcotics Drugs and Psychotropic Substances Act ('NDPS' Act).

3 Learned counsel for the applicant submits that the applicant was not present when the alleged cannabis plant cultivation was uprooted

from the applicant's field i.e. 17 straws of 14 kgs each. He submits that what was seized was not ganja but was cannabis plants and that a cannabis plant is not a narcotic drug and as such the schedule prescribing the small and commercial quantity is not applicable to cannabis plant. Learned counsel relied on the order of this Court (Aurangabad Bench) (Coram : Mangesh S. Patil, J.) dated 8th March 2019 passed in Bail Application No. 211/2019 granting bail to an accused from whose field cannabis plant was seized. Learned counsel also relied on the forensic report dated 30th December 2017 to show that what was seized from the field were cannabis plants and not ganja.

4 Learned A.P.P does not dispute the fact that what was seized were cannabis plants and that there is nothing to show, how much of the quantity from the seized cannabis plants, was ganja. Learned A.P.P does not dispute the fact that the applicant has no antecedents.

5 Perused the papers as well as the order dated 8th March 2019 passed by this Court (Coram : Mangesh S. Patil, J.), releasing an accused on bail in similar fact situation. On 14th October 2017, a report was received from the local crime branch, Pune, on the basis of information from their reliable sources that near the hills of Buchkewadi, near

Khetepathar, three persons i.e. Namdev, Kailas and Laxman (applicant) were cultivating ganja and that action should be taken against them. Accordingly, the said agricultural fields were raided, where allegedly ganja was being cultivated. When the raid was conducted, it was found that apart from the cannabis plants i.e. alleged ganja plants, there was cultivation of jowar and bajra crops in the said field. The cannabis plants i.e. alleged ganja plants were uprooted from the respective fields. From the field of the applicant-Laxman, 17 straws of 14 kgs each were seized. The seized crop was sent to the Chemical Analyser. The result of the analysis shows that the seized crop was cannabis plants. The police have prosecuted the applicant for the offence punishable under Section 20(b) of the NDPS Act. What was seized was only plants, and there is no quantification of flowering tops. In these circumstances, it is doubtful whether the quantity can be said to be a commercial one. No ganja was found even in the result report. There is no separate record/document to show that the quantity of the flowery plants and hence, at this stage, it would be doubtful whether the offence would fall under Clause (b) of Section 20 of the NDPS Act. As noted earlier, even the result of the analysis shows that what was found was cannabis plants.

6 In view of the aforesaid, in the absence of any record in respect

of quantification of flowering tops and having regard to the result of the test analysis, it is doubtful whether the quantity that was seized can be said to be commercial quantity, thereby attracting the provisions of Section 37 of the NDPS Act. Considering the aforesaid, the bar under Section 37 of the NDPS Act, will not apply. The applicant has no antecedents. Investigation is complete and charge-sheet is also filed.

7 Accordingly, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station once in two months on the first Saturday between 10:00 a.m. to 11:00 a.m., for a period of 12 months from the date of his release;
- (iii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

(vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) If there are two consecutive defaults either in attending the Police Station or if the applicant fails to appear before the trial Court, or there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8 The application accordingly disposed of.

9 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

10 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.