

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

913 BAIL APPLICATION NO.31 OF 2022

**RAOSAHEB BAPURAO SAWANDKAR
VERSUS
THE STATE OF MAHARASHTRA**

Shri. Sachin S. Deshmukh, Advocate for the applicant
Shri. V. S. Badakh, APP for the respondent/State

**CORAM : M. G. SEWLIKAR, J.
DATED : 15th February, 2022**

PER COURT :-

1. Heard.
2. Learned counsel Shri. Deshmukh for the applicant submits that the informant who is the Police Inspector, LCB, on the tip off of raided village Tembhurni. They raided a field of Raosaheb Bapurao Sawandkar i.e. the applicant and found that ganja was cultivated in the field. They were 33 in number. All these cannabis plants were uprooted. Sample was taken. Panchnama was drawn. After weighing the ganja, it weighed 97 Kilo 230 Grams worth Rs. 8,000/-. Accordingly, FIR came to be lodged.

3. Learned counsel Shri. Deshmukh submits that the weight of cannabis was including the plants. There is no evidence on record to show as to what was the net weight of the flowering fruit tops.

4. Section 2(iii)(b) of the NDPS Act defines ganja as the flowering of fruiting tops of the cannabis plant excluding the seeds and leaves when not accompanied by the tops. However, it appears that the cannabis plants were uprooted from the roots and they were weighed. Of course soil was separated. But the fact remains that the weight 97 Kilo 230 grams was inclusive of the stems. Learned counsel Shri. Deshmukh for the applicant placed reliance on the case of ***Shaikh Mohammad Shaikh Amir Versus The State of Maharashtra*** in ***Bail Application No. 01 of 2020*** in which the Court as made following observations.

"6. According to the prosecution cannabis plants were seized from the land belonging to applicant which in aggregate weighed 45.6 k.g. However, there is absolutely no material to show that what exactly is the weight of Ganja seized from the applicant, as the word Ganja is defined. Section 2(b) of the N.D.P.S. Acts, specifically defines 'ganja' to be the flowering of fruiting tops of the cannabis

plant excluding the seeds and leave when not accompanied by the tops. *Prima facie* there is no material to show that the quantity of ganja seized is commercial one.”

5. In the case at hand also, ganja seems to have been weighed along with the stems. In this view of the matter, there is no evidence to show that quantity seized was commercial quantity. Hence, I am inclined to release the applicant on bail. Applicant has no criminal antecedents. Therefore, there is no likelihood of applicant committing the same offence again. Since there is no evidence indicating that commercial quantity was found in the possession of the accused, it cannot be said that twin conditions contemplated by Section 37 of the NDPS Act are fulfilled. I am, therefore, inclined to release the applicant on bail. Hence the order.

ORDER

1. Application is allowed.
2. Applicant be released on bail on his furnishing PR bond of Rs. 30,000/- (Rupees Thirty Thousand only) with one solvent surety in the like amount in connection with CR No. 0250 of 2021 under Sections 8(A), 20, 20(A)(B) of N.D.P.S. Act 1985 registered with Hatta Police Station, Dist.

Hingoli, on condition that he shall not tamper prosecution evidence, shall not influence the witnesses and shall attend Court on the dates fixed during trial.

3. Application is disposed of.

4. It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

[M. G. SEWLIKAR, J.]

ssp