

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

BAIL APPLICATION NO. 312 OF 2022

**UTTAM S/O. MAROTRAO BHALERAO
VERSUS
THE STATE OF MAHARASHTRA**

Mr.H.H. Padalkar, Advocate for the applicant.

Mr.V.M. Kagne, APP for the respondent/State.

**CORAM : SMT. VIBHA KANKANWADI, J.
DATED : 18.04.2022**

PC :-

01. The applicant has been arrested on 02.12.2021 in connection with Crime No.324 of 2021 registered with Hatta Police Station, District - Hingoli for the offences punishable under section 8(A), 20, 20(A), 20(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985. Present application is under section 439 of the Cr.PC.

02. Heard Mr.H.H. Padalkar, learned Advocate for the applicant and Mr.V.M. Kagne, learned APP for the respondent/State.

03. It has been submitted on behalf of the applicant that it is prosecution story that ASI Gajanan More of Hatta Police Station along with other police officers had conducted raid and it is stated that around 77 kg Ganja was found to have been cultivated in Gat No.416 by the applicant. It is stated that 143 plants of cannabis were uprooted and thereafter weight of which turned out to be 77 kg. After the investigation charge-sheet has been

filed vide Special Case No.5 of 2022. It is say of the applicant that he has not committed any offence. In-fact, no statements of adjoining landholders have been recorded. The land was owned and possessed by father of applicant – Marotrao. The extent of his holding is 0.87 R and not 4 acres as alleged in the FIR. Another act to be noted is that all the trees have been weighed collectively even with the mud that was on the trees. Section 2-B of the NDPS Act would cover only flowering or fruiting tops of cannabis plant excluding seeds and leaves. Therefore, it cannot be said that the entire plant would be Ganja. The quantity will be very less if flowering or fruiting tops are considered. In-fact, no such description is appearing in the panchanama. It cannot be said that the applicant was carrying commercial quantity of Ganja. He relied on the decision in **Madhukar s/o. Pandurang Kanthale Vs. The State of Maharashtra, 2002 ALL MR (Cri) 1381**, wherein it has been held that Bhang is not covered by the definition of cannabis (hemp) as it is specifically excluded from the definition of Ganja. Bhang is not a narcotic drug or phototropic substance and its possession, purchase or sale etc. is not regulated by the provisions of the NDPS Act. He further relied on the judgment in the case of **Dattu Shankar Shinde Vs. The State of Maharashtra & Anr., Bail Application No.852 of 2021** decided at the Principal Seat on 17th March, 2022, wherein 173 plants of cannabis were seized weighing 131 kg 800 gms. It is then stated that the weight of the dried plant in gunny bags is 8 kg. 300 gms. It was opined that prosecution is not certain how much is exact weight of Ganja or cannabis plant recovered at the instance of the applicant, which he allegedly cultivated at his field and therefore that applicant was released on bail. In the present case also, learned Advocate for the applicant prays for

releasing the applicant on bail.

04. Learned APP has strongly opposed the application and submitted that charge-sheet is also filed and it has been specifically stated that the applicant who was cultivating the land had also taken the said crop. The neighbouring villagers' statement under section 161 of Cr.PC. have been recorded. The CA report states that the sample is of Ganja and it is a narcotic drug. Now, dispute is raised in respect of weight and therefore learned APP relied on the recent decision in the **State of Himachal Pradesh Vs. Karuna Shanker Puri, 2022 LiveLaw (SC) 173**, decided by the Apex Court on 9th February, 2022, wherein it has been held that the quantity of the neutral substance is not to be excluded and to be taken into consideration along with actual content of the weight of the offending drug while determining the small and commercial quantity. In this case, reliance was placed on **Hira Singh & Anr. Vs. Union of India & Anr. (2020) SCC Online SC 382**, wherein the Apex Court had opined on the issue whether the actual content by weight of the offending narcotic drug is to be considered or whether as a whole, the procedure has to be looked into on the basis of larger objective of the NDPS Act. Taking into consideration para 65 from the judgment of **Hira Singh (Supra)**, it has been observed that the effect of aforesaid is that the quantity of the narcotic substance is not to be excluded and to be taken into consideration along with actual content of the weight of the offending drug while determining small and commercial quantities. Therefore, no case is made out for grant of bail by the present applicant.

05. At the outset it is to be noted that we cannot undermine the object of the NDPS Act and hazards of narcotic drug including its effect on the young generation. Here the entire charge-sheet would show that all the precautions were taken by the police officer investigating or conducting raid that the part of the land where the grown Ganja would be identified. Even Talathi and other Revenue Officer were present at the time of raid. The statements of adjoining villagers are also recorded and therefore merely because the land is standing in the name of father of the applicant cannot get the applicant scot-free. The neighbouring persons have stated that the applicant is cultivating the land of the father and even the applicant has given his occupation as agriculture. If that land is cultivated by his father then which land he is cultivating is not explained by him.

06. Now, as regards quantity of narcotic drug that has been seized is 77 kg. It is definitely a commercial quantity. The decision of the Apex Court is binding on this Court. Taking into consideration the decision in the **State of Himachal Pradesh (Supra)** as well as **Hira Singh (Supra)**, the larger objective of the NDPS Act is required to be considered. No doubt there may be cases of mixture of narcotic drug or psychotropic substance with one or more neutral substances and in that case, the observation would be perfectly applicable. But, here in this case, the entire plant was uprooted. There might be some particles of mud or earth to it and it can be termed as neutral substance. In that case also same observations are applicable and therefore when there is prima facie evidence against present applicant, he cannot be released on bail, when offence is under the NDPS Act.

07. The application, therefore, stands rejected.

[SMT. VIBHA KANKANWADI, J.]