

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

BAIL APPLICATION NO. 1601 OF 2021

Narayan S/o Santram Sathe

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Sudarshan J. Salunke Advocate for Applicant.
Mrs.Vaishali Patil-Jadhav, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 23rd DECEMBER 2021

DATE OF PRONOUNCING ORDER : 3rd JANUARY 2022

ORDER :

1. Present Application has been filed under Section 439 of the Code of Criminal Procedure by the accused who has been arrested in connection with Crime No. 349 of 2021 registered with AUSA Police Station, District-Latur for the offences punishable under Section 20 (A), 20 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. Heard Mr. Salunke, learned Advocate for the applicant and Mrs Patil – Jadhav, learned APP for the respondent – State. Learned Advocate for the applicant has relied on the decision of this Court in ***Jagan Parasram Chavan vs. The State of Maharashtra, 2014 ALL MR (Cri) 4589***, wherein recovery of Ganja was 14 Kilogram allegedly cultivated by the applicant therein, yet he was given bail by this Court. Further, reliance has been placed on the decision in ***Birbal Prasad @ Birbal Prasad Sah @ Birbal Prasad Sao @ Birbal Sah vs. The State of Bihar, 2018 ALL MR (Cri) 2293 (S.C.)***, wherein also when the quantity involved in the case was 14 Kilogram of Ganja, which was non-commercial quantity, bail was given by the Apex Court.

3. Perusal of the First Information Report lodged by Police Inspector Shankar Patwari of Ausa Police Station on 3rd November 2021 discloses that his team had received secret information about cultivation of Ganja and accordingly after complying with the provisions, raid was conducted. When they had found that there was crop of Ganja, at that time the applicant was not present. They could find in all fifteen plants of Ganja, one axe and one wooden plank. They uprooted the plants and brought it in the open place. At that time present applicant

arrived at the place. He was offered personal search, which he refused and then the seized articles were weighed. It was found that the weight of the plants was 18 Kilogram and therefore, offence has been registered against the present applicant.

4. It is to be noted that though the learned Advocate for the applicant tried to make differentiation between the definition of Ganja and the fact that in the present case what has been seized is the plants thereby no fruiting tops were seized, yet it can be seen that the cannabis plants have been covered under the definition of Section 2 (iv) of the Narcotic Drugs and Psychotropic Substances Act.

5. Now, the question is, when 18 Kilogram of Ganja i.e. cannabis plants have been recovered, whether the applicant deserves to be released on bail. Here at this stage, the C.A. Report is not collected nor the First Information Report states that any test was done with any quick testing instrument at the spot to show *prima facie* that the plants those were seized are cannabis plants. Therefore, in view of the decisions referred and relied on by the learned Advocate for the applicant, the applicant deserves to be released on bail. Hence the following order:-

ORDER

- i) The Application stands allowed.
- ii) The applicant – Narayan S/o Santram Sathe be released on bail in connection with Crime No. 349 of 2021 registered with AUSA Police Station, District-Latur for the offences punishable under Section 20 (A), 20 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 on PR Bond of Rs.30,000/- (Rupees Thirty Thousand) with one solvent surety of Rs.30,000/- (Rupees Thirty Thousand).
- iii) The applicant shall comply with the requirements set out in Para No. 12 (1) to (6) of Chapter-I of the Criminal Manual, whichever are applicable.
- iv) The applicant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence in any manner.
- v) The applicant shall remain present before the Investigating Officer on every Monday between 10.00 a.m. to 2.00 p.m. till filing of the charge-sheet.

[SMT. VIBHA KANKANWADI , J.]