

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

BAIL APPLICATION NO.1979 OF 2022

**PRAKASH BHAGINATH TRIBHUVAN
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr. Sonavane Narendra D.
APP for Respondent/State : Mr. S.B. Narwade

...
CORAM : S.G. MEHARE, J.

DATED : 21st DECEMBER, 2022

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State.
2. Learned counsel for the applicant would submit that the alleged quantity of cannabis is below the commercial quantity as quantified under the Government Notification issued in pursuance of clause (viia) of Section 2 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'). The police did not exclude the seeds and leaves to weigh, the definite quantity of Ganja. The term Ganja has been defined under Section 2(b) of the NDPS Act. "Ganja' that is, 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, any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom."

3. Reading the definition, he has vehemently argued that the investigation officer did not exclude the seeds and leaves and quantified the quantity of the alleged cannabis plants. He also referred to the definition of 'cannabis plants' under clause (iv) of Section 2 of the NDPS Act. "Cannabis plant means any plant of the genus cannabis." He would rely on the order of this Court in the case of Dattu Shankar Shinde Vs. The State of Maharashtra and Another in Bail Application No.852 of 2021 dated 17.03.2022. Relying on the said case, he would state that the said case was similar to the case in hand. The applicant has no antecedents to his discredit. No commercial quantity had been seized. Hence, he may be granted bail.

4. Learned APP has vehemently opposed the application. He would argue that the definition of cannabis plants should be read in conjunction with Section 20 of NDPS Act. However, he did not agree with the commercial quantity quantified in the notification, wherein at serial no.55, the commercial quantity of 'Ganja' has been shown 20 kg. He argued that the notification is silent about the 'cannabis plant'. If his arguments would have been accepted, that would mean that the government has exempted the cannabis plants from the offences under the NDPS Act. Besides this, he also argued that 7/12 extract stands in the name of the applicant. The offence is very very serious. The applicant has contravened the provisions of the NDPS Act. The

investigation is in progress. Hence, the applicant may not be granted bail.

5. The Ganja is flowering or fruiting tops of the cannabis plant. If this definition of Ganja is read along with definition of cannabis plant, it cannot be said that the Ganja and cannabis plant are two separate substances. The cannabis plants includes seeds and leaves accompanied by the tops. Reading these two definitions together, the arguments of the learned APP Shri Narwade that since the cannabis have not been notified to determine the commercial quantity, therefore, the applicant is not entitled to bail, appears without water. It is a misconception of law and incorrect interpretation.

6. In similar case of Dattu Shankar Shinde (cited supra), this Court has examined the definition of Ganja and observed that while effecting seizure of the cannabis plants, the police have not excluded the seeds and leaves and soil attached to the roots of the plants and have cumulatively weighed the plants including everything. In the said case, it was alleged that 173 cannabis plants weighing 131 kg and 800 grams were seized. Herein the case, the prosecution has a case that cannabis plants weighing 12.370 kg were seized. It is a quantity below the commercial quantity. The CA report will take its own time. There are no antecedents to the discredit of

the applicant. No purpose would be served in keeping the applicant behind the bar. Hence, he deserve bail. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Prakash Bhaginath Tribhuvan, be released on bail on executing P.B. and S.B. of Rs.50,000/- (Rupees fifty thousand) with one solvent surety in the like amount in connection with Crime No.298 of 2022, registered at Shivur Police Station, District Aurangabad for the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on the condition that he shall attend the concerned police station as and when called on written notice till tiling of the charge sheet.

(S.G. MEHARE, J.)