

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

BAIL APPLICATION NO.1725 OF 2021

**AJAY VITTHAL SHRIRAM
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr. Barde Parag Vijay
APP for Respondents/State : Mrs. R.P. Gour

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**CORAM : M.G. SEWLIKAR, J.
RESERVED ON : 21st February, 2022
PRONOUNCED ON : 16th March, 2022**

ORDER:-

This is an application under Section 439 of the Cr.P.C. for releasing the applicant on bail in connection with Crime No.232/2021 registered with Omerga Police Station, District Osmanabad under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. On 3rd April, 2021 at 11.55 pm a vehicle of Ashok Leyland company bearing no.MH-40-HG-6515 came near Basavkalyan. When the vehicle was being inspected, two occupants of the vehicle, on the pretext of urinating ran away taking advantage of darkness. On inspecting the vehicle, it was noticed that there were four gunny bags which contained Ganja in the form of green leaves, fruiting tops, seeds, twigs and tops. It had a strong smell from which it could be made out that it was Ganja. Driver of the

vehicle was one Prakash Behera. On weighing Ganja, it weighed 78.735 kg. Driver stated that those two persons got into the vehicle at Hyderabad for going to Solapur. During his interrogation the names of those two persons who ran away were disclosed as Ajay Vitthal Shriram i.e. the applicant and Aniruddh N. Pawar. It was also revealed during the investigation that all the three of them had gone to Tekmet, Suryapeth, Tq. & Dist. Suryapeth for bringing Ganja. Sample of Ganja was taken. Applicant was accordingly arrested.

3. Heard learned counsel Shri Barde for the applicant and Smt. Gour learned APP for the State.

4. Shri Barde submits that applicant was not in conscious possession of the Ganja. He submitted that applicant was not aware as to what was there in the Ashok Leyland vehicle nor he was aware that there were four gunny bags which contained Ganja. He further submits that the substance which was seized from the applicant does not fit in the definition of Ganja. He submits that in terms of Section 2 (3) (b) of the NDPS Act, Ganja includes fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the fruiting tops). He submitted that description mentioned is in Marathi as 'Vanaspatiche Shende'. He submits that the substance which was allegedly seized from the vehicle does not answer the definition of Ganja. He further

submits that as per panchanama weight of the Ganja was shown to be 78.735 kg, whereas the Ganja as measured by the Judicial Magistrate (F.C.) weighed 74.500 kg. He submitted that this difference in the quantity of Ganja shows that it was not weighed properly. The weight should be only of fruiting tops and not other weight. He, therefore, submits that the weight of 78.735 kg contains leaves, seeds etc. Seeds and leaves can be included in the weight only when they are accompanied by tops. Since in the case at hand there were no tops, it cannot be said to be Ganja and weight is exclusive of green leaves and seeds etc.

5. He placed reliance on the following cases **Laxma Shankar Ghankute V/s. The State of Maharashtra** (Criminal Bail Application No.2583/2019), **Hari Mahadu Valse V/s. The State of Maharashtra** (Bail Application No.2299/2019), **Vishal Chhagan Tanchilkar and Anr. V/s. The State of Maharashtra** (Bail Application No.385/2021), **Raju Mohanrao Rathod V/s. State of Maharashtra; 2008 Cri.L.J. 1131** and **Shaikh Mohamnmd Shaikh Amir V/s. The State of Maharashtra** (Bail Application No.01/2020)

6. Seizure panchanama shows that what was seized from the applicant was leaves, fruits, flowers, seeds and fruiting tops. In Marathi it is described as 'Vanaspatiche Shende' it means tops of the plants.

7. The definition of Ganja in terms of Section 2(3)(b) means Ganja, flowering of fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the fruiting tops). Seizure panchanama shows that the substance that was seized contained 'Vanaspatiche Shende' meaning tops of the plants. Thus, when the seeds and leaves are accompanied by the tops, seeds and leaves also have to be considered for weighing Ganja. In the case at hand, seeds and leaves were accompanied by the tops. Therefore, they ought to be weighed along with Ganja.

8. When the substance which is seized from the applicant is tested on the touchstone of the definition of Ganja as given in the NDPS Act, it gives a clear picture that the substance constituted Ganja.

9. In the case of Shaikh Mohammad Shaikh Amir cited supra this Court held as under :

“6. ...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. Act, 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.”

10. This decision of this Court has no application because in this case cannabis plant were found to have been grown in the field. Cannabis plant were seized which in aggregate weighed 42.6 kg. In the case at hand, the plants were weighed along with tops. Same principle has been laid down in

other authorities.

11. In the case of **Raju Mohanrao Rathod** cited (supra) this Court has observed thus:

“12. It is true that definition of the word "ganja" imply the flowering tops. However, the definition by itself does not exclude the green leaves when they are accompanied by the flowering tops or fruiting tops of cannabis plant. The definition may be reproduced as follows:

2. Definitions. - In this Act, unless the context otherwise requires

(i) x x x x

(ii) x x x x

(iii) cannabis (hemp) means

(a) x x x x

(b) 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:

(c) x x x x

A bare reading of the above definition would make it manifest that the seeds and the leaves are excluded from the operation of the definition of word "ganja" only when the same are not accompanied by the flowering tops or the fruiting tops. The report of the C.A. reveals that greenish flowering tops and pieces of greenish leaves, seeds and stalks were noticed at the time of analysis. Thus, when the leaves and seeds were accompanied by the fruiting tops then it will have to be said that the seized stock was of ganja.”

11. From the bare reading of the above definition, it is manifest that seeds and leaves are to be included when the same are accompanied by flower tops or the fruiting tops. In the case at hand, the substance seized shows that the seeds and leaves were accompanied by fruiting tops. Therefore, there is no force in the submission of learned counsel.

12. Learned counsel Shri Barde submits that in terms of Section 52-A, the Magistrate has to certify about the correctness of the inventory so prepared. He submits that the inventory prepared by the Magistrate does not show that such certificate was annexed. This aspect can be gone into during the trial. Magistrate has certified that the inventory is correct. It is true that there is some variance in the weight when weighed by the raiding party and weight when weighed by the Magistrate. However, the difference is not so large as to doubt its authenticity. This submission, therefore, needs no consideration at this *prima facie* stage.

13. For the reasons discussed above, there is *prima facie* case against the applicant in terms of Section 37 of the NDPS Act. Applicant has to prove that there are reasonable grounds for believing that applicant has not committed any offence under this Act. In this view of the matter, I am not inclined to release the applicant on bail. Hence, the Application is dismissed.

14. These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.