

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO. 852 OF 2021**

Dattu Shankar Shinde

.....Applicant

Vs.

The State Of Maharashtra & Anr.

.....Respondents

Mr. Sujay H. Gangal a/w Gaurav H. Gangal, Kuldeep Pawar for the Applicant.
Smt. Veera Shinde APP for the Respondent-State.

Mr. N.B. Jadhav, Police Naik, attached to Daund Police Station present.

CORAM : A. S. GADKARI, J.**DATE : 17th MARCH, 2022.****PC:-**

This is an Application under Section 439 of the Code of Criminal Procedure for bail in C.R. No. 312 of 2020 registered with Daund Police Station, District Pune, dated 5th June, 2020, for the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "*the NDSP Act*").

2 Heard Mr. Gangal, learned Advocate for the Applicant and Smt. Shinde learned APP for the State. Perused charge-sheet.

3 It is the prosecution case that, after receipt of confidential information, the police attached to Daund Police Station conducted a raid in the agricultural field of the Petitioner and found that, he was cultivating cannabis. The police found in all 173 plants of cannabis. They also found

about 800 grams of dried cannabis plants stored in gunny bags. The police accordingly effected panchanama on 5th June, 2020 and Mr. Kalyan Shingade, Police Constable attached to Daund Police Station lodged a crime on same day under Section 20 of the NDPS Act.

4 It is the prosecution case that, total weight of 173 cannabis plants was 131 kg and 800 grams. That, the weight of the dried plants which were stored in the gunny bags was about 8 kg and 300 grams. Thus in all about 140 kg of 'Ganja plants' were recovered from the Applicant under the panchanama dated 5th June, 2020.

5 Perusal of the First Information Report and other documents would reveal that, while effecting seizure of said cannabis plants, the police have not segregated the soil attached to its roots and the weight of the said cannabis plants includes soil attached to it.

Section 2(b) of the NDPS Act defines "*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.*"

6 As noted earlier, the police while effecting seizure of the cannabis plants have not excluded the seeds and leaves and soil attached to the roots of the plants and have cumulatively weighed the plants including everything.

7 The prosecution is not certain as to how much is the exact

weight pf “Ganja” or cannabis plants recovered at the instance of the Applicant which he allegedly cultivated at his field. *Prima facie* it appears that, the prosecution has varied the weight of ‘Ganja’ and alleged cannabis plants at different places in charge-sheet and specific weight of “Ganja” or cannabis plants and has not been mentioned by it.

8 In view thereof, the Applicant can be released on bail.

Hence the following Order.

- a) The Applicant be released on bail in C.R. No. 312 of 2020 registered with Daund Police Station, District Pune on his furnishing PR bond of Rs.50,000/- with one or more solvent local sureties in the like amount.
- b) After his release from Jail, the Applicant shall attend the Daund Police Station, District Pune, on every first Monday of the month between 10.00 a.m. and 12.00 noon.
- c) After his release from Jail, the Applicant shall not indulge into cultivating cannabis/Ganja plants or any other activities which are prohibited under the NDPS Act.
- d) After his release from Jail, the Applicant shall attend all the dates before the Trial Court unless precluded on

medical grounds by the concerned Court.

- e) Any two consecutive defaults in complying with the aforestated conditions will attract the provisions of cancellation of bail.
- f) Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

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by SANJIV
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MASHALKAR
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