

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2977 OF 2021**

Rahul Bhimrao Pawar	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Swaraj S. Jadhav, for the Applicant.

Ms. Pallavi N. Dabholkar, APP, for the State-Respondent.

CORAM : V. G. BISHT, J.

RESERVED ON : 9th December, 2021.

PRONOUNCED ON : 3rd January, 2022.

PC:-

. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in C.R. No. 377 of 2020 registered with Chikhli Police Station, District-Pune for the offences punishable under Sections 8(c), 20(b)(ii)(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

2 It is the case of prosecution that on 17/10/2020 the informant and other staff members were patrolling to keep a tab on illegal activities of the known criminals on account of Navratra Festival. While

doing so, they met a team of a Narcotic Control Bureau who was also patrolling. Around 1-00 p.m. they came across two persons sitting on a motorbike under a tree and on being confronted, they found their movements suspicious. The applicant and other accused were found in possession of a gunny sack. Upon untying the gunny sack, they found packets containing some brownish flowering-fruited tops, pieces of stalks, stems, leaves and seeds. Accordingly, the packets were weighed on an electronic weighing machine and it weighed 27 Kgs and 750 grams of ganja. The informant accordingly lodged the report.

3 Mr. Jadhav, learned Counsel for the applicant, submits that the alleged contraband doesn't appear to fall within the four corners of "ganja" as defined under Section 2(b) of the NDPS Act. There is non-compliance of said definition. Moreover, investigation is completed and the charge-sheet has been filed. In such circumstances, no purpose would be served by keeping the applicant behind the bars, argued learned Counsel.

4 Ms. Dabholkar, learned APP, on the other hand, vehemently opposed the submissions by contending that the applicant was found in possession of 27kgs and 750 gms ganja which was commercial quantity

and having regard to the seriousness of the offence, the application is required to be rejected.

5 Perused the investigation papers including Chemical Analyzer's report.

6 There is no dispute that the "commercial quantity" in relation to NDPS Act for "ganja" means, any quantity greater than 20 Kgs. Then, Section 2(b) & (c) defines "ganja" as 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, and any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom.

7 The definition of term "ganja" makes it clear that "ganja" is the flowering or fruiting tops of cannabis plant, excluding the seeds and leaves when not accompanied by the tops. In the case in hand, from the seizure panchanama it is clear that what was seized was flowering-fruiting tops, stalks pieces, stems, leaves and seeds weighing 27kgs and 750 gms.

8 The above state of affairs would make it clear that there is nothing on record to prima facie establish that before carrying the weight of the contraband, the Investigator had separated the flowering or fruiting tops of cannabis plant in order to ascertain the exact quantity of ganja. This fact becomes further clear from the CA report which also shows that the description of articles contained in parcels was greenish brown coloured flowering-fruiting tops mixed with pieces of stalks, stems, leaves and seeds. Apparently, there was no quantification of flowering tops and therefore, it is quite questionable whether the quantity can be said to be commercial.

9 In view of above, I do not find the applicability of Section 37 of the NDPS Act and hold that the applicant has made out a case for bail.

10 For all the aforesaid reasons, I pass the following order.

ORDER

(i) **Applicant- Rahul Bhimrao Pawar shall be released on bail in C.R. No. 377 of 2020 registered with Chikhli Police Station, District-Pune on his executing P .R. bond in the sum of Rs. 25,000/- with one or more sureties in like amount.**

(ii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts either to the Court or to any Police Officer.

(iii) The applicant shall not tamper with the prosecution evidence in any manner and shall co-operate the learned trial Judge in expeditious disposal of the trial against him.

(iv) The applicant shall not indulge in similar type of offences in future.

(v) The observations made herein-above are prima-facie in its nature for the purpose of deciding the bail application only. The trial Court shall not be influenced by the observations while deciding the case on merits.

(vi) Bail before the trial Court.

(vii) The application is allowed in the aforesaid terms and stands disposed of accordingly.

REKHA
PRAKASH
PATIL

Digitally signed by
REKHA PRAKASH
PATIL
Date: 2022.01.03
15:05:06 +0530

Rekha Patil

(V. G. BISHT, J.)