

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 3663 OF 2021

Daryappa Kushaba Akkiwad	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Umesh R. Mankapure, for the Applicant.

Smt. M. M. Deshmukh, APP, for the State-Respondent.

Mr. Vijay Gaikwad, PSI attached to Saikheda Police Station, Nashik (R) present.

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. 73 of 2020 (CCTNS No. 441/2020) registered with Jath Police Station, District-Sangli for the offences punishable under Sections 20(b), 22 and 8 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

2 The prosecution alleges that the applicant and other co-accused were found cultivating ganja in their field, gat No. 428, in the crop of turmeric without any licence. The ganja plants were admeasuring 5 to

6 feet height and weighing 519.33 kg. First Information Report (FIR) accordingly came to be lodged.

3 Mr. Mankapure, learned Counsel for the applicant, submits that the investigation papers on record would show that it is difficult to establish that the said alleged contraband came within the meaning of “ganja” as defined under Section 2(b) of the NDPS Act. According to learned Counsel, investigation is completed and the charge-sheet has been filed. The trial may take its own time. In such circumstances, applicant may be enlarged on bail, urged learned Counsel.

4 Smt.Deshmukh, learned APP, on the other hand, opposed the submissions by contending that the applicant and other co-accused were found cultivating ganja crop in their field and invited my attention to the 7/12 extract. Since the weight of seized ganja was in commercial quantity as contemplated in the NDPS Act, there is no merit in the application and same is liable to be rejected.

5 Perused the investigation papers and other relevant documents including the Inventory Certificate prepared by learned JMFC, Jath, District- Sangli.

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 very 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, as seen from the FIR, what is found was 519.33 kgs of “ganja”. However, what was collected from the spot was the whole plant having length of 5 to 6 feet. Similarly, Certificate of Inventory in respect of seized muddemal as per Section 52(A)(3) of NDPS Act shows that the packets and the envelopes were containing alleged ganja plants with leaves of greenish colour. Thus, the Certificate of Inventory also shows that it was the plant with leaves.

8 The above being obtaining situation on record, it goes to show prima-facie that before carrying the weight of the seized plant, the

Investigator had not separated the flowering or fruiting tops of cannabis plant in order to ascertain the exact quantity of ganja. This is quite obvious from the Certificate of Inventory as noted herein-above. The Inventory Certificate also does not show that flowering or fruiting tops of the plant were in any manner separated in order to ascertain the correct quantity of ganja. No Chemical Analyzer's report is forthcoming to show otherwise. In the case of **Laxman Shankar Ghankute Vs. State of Maharashtra**¹ this Court on perusal of material on record found that what was seized was only plants and there was no quantification of flowering tops and therefore, the Court was doubtful whether the quantity can be said to be commercial.

9 For the aforesaid reasons, I am clear in my mind as to the inapplicability 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- Daryappa Kushaba Akkiwad shall be released on bail in C.R. No. 73 of 2020 (CCTNS No. 441/2020) registered with Jath Police Station, District-Sangli on his executing P .R. bond in the sum of**

¹ Criminal Bail Application No. 2583 of 2019 dated 23rd June 2021.

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.

(V. G. BISHT, J.)

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PRAKASH
PATIL

Rekha Patil

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