

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.3754 OF 2021

Kiran Anil Pawar	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Chaitanya Pendse i/b. Ms. Siddhi Bhosale for the Applicant.
Ms Geeta Mulekar, APP for the State.

CORAM : NITIN W. SAMBRE, J.

DATED : 29th SEPTEMBER, 2022

P.C.:

1. On 21/01/2021 the applicant was apprehended and taken in custody after having found possessing narcotic substance viz. ganja which resulted into registration of Crime No. 65 of 2021 punishable under sections 8(c), 20b(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act (for short "NDPS Act"). After investigation in the matter is over, the applicant is already charge-sheeted.

2. The contentions of Mr. Pendse learned counsel for the applicant are, report of the chemical analyzer certifies that what is seized from the applicant contains Yellowish brown coloured flowering / fruiting tops mixed with leaves, stems, stalks and

seeds put in polythene bag. As such, according to him, what was seized from the applicant is not pure ganja but contains certain articles which cannot be identified as a narcotic substance. As such, it is claimed that the investigating agency ought to have analyzed the material in proper way so as to find out the exact quantity of the narcotic substance which was seized from the custody of the applicant and not the material mixed with it.

3. Mr. Pendse would draw support from the order of this Court delivered in ABA/2173/2022 decided on 29/08/2022 so as to claim that the entire seizer from the custody of the applicant cannot be termed as narcotic substance within the meaning of section 2(iii) (b) of the NDPS Act.

4. Apart from above, the contentions of learned counsel for the applicant Mr. Pendse are, what is seized from the custody of the applicant is the material weighing around 21.92 grams which also contains (mixing of) other materials, which is not covered under the NDPS Act. As such, he would urge that the quantity found in the custody of the applicant cannot be termed as commercial but at the most intermediary i.e. in between small and commercial quantity. As such, he would urge that the applicant having suffered incarceration for more than 1½ years, should be

permitted to be released.

5. Learned APP would oppose the aforesaid prayer as according to her, the applicant was caught red handed while he was in custody of the aforesaid narcotic substance which he initially stored on foot rest of a two-wheeler. She would urge that alongwith two-wheeler and narcotic substance, the applicant was apprehended from the spot. She would further claim that the statutory compliances were duly reported and as such there is no case for grant of bail.

6. I have appreciated the aforesaid submissions.

7. The fact remains that the substance which was seized from the custody of the applicant is certified to be a narcotic substance i.e. ganja which falls under section 2(iii)(b) of the NDPS Act.

8. No doubt there is substance in the submissions of learned counsel for the applicant that the substance allegedly seized from the custody of the applicant contains mixture of leaves, stems, stalks and seeds. However, whether the applicant was carrying intermediate quantity of the substance i.e. below 20 kg or above 1 kg cannot be inferred at this stage of the proceedings.

9. In the absence of specific evidence, it cannot be said that the applicant was not possessing commercial

quantity of narcotic substance. As such, the reliance placed on the order of this Court in ABA/2173/2022 is of hardly any significance.

10. However, it shall always open for the applicant to canvass such claim before the Trial Court at an appropriate stage.

11. In case, if it is found that what was seized from the applicant is intermediate quantity of the narcotic substance, it shall be open for the applicant to move afresh before the Court below.

12. In view of above, no case for bail is made out. The application as such fails and stands rejected.

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(NITIN W. SAMBRE, J.)