

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.677 OF 2022

(BHIMRAO PATRU MADAVI....VS.. STATE OF MAH. THR. PSO PS VIRUR, TQ. RAJURA, DIST.
CHANDRAPUR)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms Garima Jain, Adv. h/f. Shri S.V.Sirpurkar, Advocate for Applicant.
Shri V.A.Thakre, A.P.P. for Non-applicant/State.

CORAM : ANIL S. KILOR, J.
DATED : JULY 28, 2022.

1. Heard.

2. The applicant has approached this Court by filing present application under Section 439 of the Code of Criminal Procedure for grant of bail in connection with Crime No.302 of 2021, registered with Police Station, Virur, District : Chandrapur for the offences punishable under Sections 20 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act").

3. Ms Garima Jain, learned counsel for the applicant submits that, though in the F.I.R. the quantity of the contraband was shown as 20 kgs. 500 gms., which is a commercial quantity, in the inventory submitted to the Judicial Magistrate First Class, Rajura, District : Chandrapur under Section 52-A of the NDPS Act the

quantity was shown as 16 Kgs. which is not a commercial quantity. She further submits that the said difference in quantity, was because, at the time of seizure, the plants with roots attached with soil, were weighed and the quantity mentioned in the inventory which was submitted to the Judicial Magistrate First Class, was weighed without soil. She therefore, submits that considering the definition of *ganja* the weight of roots and soil attached to the plants cannot be considered as weight of *ganja*. On the point of inventory under Section 52-A the learned counsel for the applicant has placed reliance on a judgment of the Hon'ble Supreme Court of India in the case of *Union of India ..vs.. Mohanlal and another*, reported in (2016) 3 SCC 379.

4. It is further submitted that after completion of investigation the charge sheet has been filed and no further custody of the applicant is necessary. It is further submitted that the applicant is 68 years old and as his custody is no more required, he may be released on bail.

5. On the other hand, the learned A.P.P. strongly opposed the application. He submits that the weight at the time of seizure is relevant and not the weight mentioned in the inventory submitted under Section 52-A of the NDPS Act. In support of his contention he has placed reliance on a judgment of the Hon'ble Supreme Court of India in the case of *Shiv Kumar Mishra ..vs.. State of Goa*, reported in (2009) 3 SCC 797.

6. The learned A.P.P. thus, submits that as the quantity is a commercial quantity, it is necessary to satisfy the twin conditions of Section 37 of the NDPS Act.

7. I have perused the charge sheet and the F.I.R. The F.I.R. states that 37 plants removed with the roots or cut from the bottom of the plants were measured. It has also come in the F.I.R. that the roots were attached with soil.

8. In this backdrop, if the definition of ganja is seen, which is given under Section 2(iii)(b) of the NDPS Act and means that the flowering or fruiting tops of the cannabis plants (excluding the seeds and leaves when not accompanied by the tops), by whatever, name they may be known or designated it makes it clear that *ganja* is the flowering or fruiting tops of the cannabis plant excluding the seeds and leaves, when not accompanied by the tops.

9. In this case, the F.I.R. sufficiently shows that 37 plants which were seized were either having roots or they were cut from bottom of plants. It further shows that the seized plants having roots were attached with soil, which further makes it clear that the quantity weighed at the time of seizure i.e. 20kgs. 500 gms. was including the weight of the roots and the soil attached to it.

10. The inventory prepared under Section 52-A and submitted to the learned Judicial Magistrate First Class, discloses the total weight of the contraband as 16 Kg. Thus, it appears that when the contraband was measured without roots and soil, it was 16 Kg., which is not a commercial quantity.

11. As far as the judgment in the case of *Shiv Kumar Mishra* (supra) is concerned there cannot be any dispute that there is nothing in the NDPS Act to suggest that when the weight or quantity of the ganja is to be ascertained the moisture content has to be separately ascertained and excluded. And further the weight of the contraband would be the weight taken at the time of seizure.

12. In this case, considering the definition of *ganja* and the fact that the plants which were seized were having roots attached with the soil or were without roots, while weighing to ascertain the quantity at the time of seizure, *prima-facie*, creates doubt about actual quantity of the *ganja* seized from the applicant.

13. Thus, considering the quantity of the contraband as mentioned in the inventory and as the investigation is over and charge sheet has been filed, I am of the opinion that the further custody of the applicant is not necessary. Moreover, there are no criminal antecedents

of a similar nature to the discredit of the applicant. The applicant is in jail for a substantive period and there is no likelihood that in near future that the trial will commence. Thus, considering the above referred factors, I am of the opinion that the applicant is entitled for grant of bail. Hence, I pass the following order:

- i) The application is allowed.
- ii) It is directed that the applicant shall be released on bail in connection with Crime No.0302 of 2021, registered with Police Station, Virur, District : Chandrapur for the offences punishable under Sections 20 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 on furnishing P.R. Bond in the sum of Rupees Twenty Five Thousand with one solvent surety in the like amount.
- iii) The applicant shall attend the concerned Police Station on every first day of each month between 10:00 a.m. and 12:00, till culmination of trial.
- iv) The applicant shall not leave the jurisdiction of the concerned Police Station without permission of the Court.

- v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence.
- vi) The applicant shall attend the trial before the Sessions Court regularly on every date unless exemption is granted by the Special Court.

The Criminal Application is **disposed of** accordingly.

JUDGE

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