

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

942 BAIL APPLICATION NO.49 OF 2023

Jayaji Gyanoba Palve,
Age; 50 years, Occ; Agril,
R/o; Wanjar Umrade, Tq. Jalna,
Dist. Jalna.

...Applicant

VERSUS

The State of Maharashtra,
Through Police Station Taluka Jalna,
Dist. Jalna.

...Respondent

...
Advocate for Applicant : Mr. S.R.Bagul h/f Mr.Gadegaonkar Bharat
N.

APP for Respondent-State : Mr.S.B.Narwade

...

CORAM : S. G. MEHARE, J.

DATE : 17.01.2023.

PER COURT :

1. Heard the learned counsel for the applicant and the learned APP for the respondent/State.

2. It has been alleged against the applicant that he had planted cannabis in his field. Police, in raid uprooted the cannabis plants and filled it in 10 different gunny bags. It is apparent that the cannabis plants were weighed cumulatively with seeds leaves and soil attached to the roots of the plants. Total weight of the cannabis

plants was 115 k.g.

3. The learned counsel for the applicant would submit that the term “Ganja” has been defined in Section 2 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”) that means flowering or fruiting tops of cannabis plants (excluding the seeds and leaves when not accompanied by tops), by whatever name they may be known or designated. This Court in the case of Dattu Shankar Vs. the State of Maharashtra and Another at Principal Seat at Bombay in Bail Application No. 852 of 2021 dated 17.03.2022 observed that the prosecution has not ascertained as to how much is the exact weight of the Ganja and cannabis plants secured at the instance of the applicant alleged cultivated in his field.

4. Since the police did not segregate the soil attached to the roots, flowering tops, therefore, it would be uncertain that the quantity allegedly seized is a commercial quantity. Therefore, Section 37 of the NDPS Act would not attract. In view of the provisions of law, there appears substance in the argument of the learned counsel for the applicant.

5. The learned APP would rely upon the order of this Court in Bail Application No. 1378 of 2020, **Nath Mundhe Vs the State of**

Maharashtra dated 03.02.2021 and argue that the planting of cannabis plants is an offence under the NDPS Act which is a serious and harmful to the human life. Therefore, the applicant may not be granted bail.

6. There is doubt about the exact quantity of Ganja. There are no criminal antecedents to the dis-credit of the applicant. The material investigation has been completed. The applicant deserves bail on certain conditions. Hence following order :

ORDER

- a) The application is allowed.
- b) Applicant – Jayaji Gyanoba Palve, be released on bail, on furnishing PB and SB of Rs.50,000/-, with one solvent surety in the like amount, in C.R.No.734 of 2022 registered with Taluka Jalna Police Station, Tq. & District Jalna, for the offence punishable under Section 20 of the NDPS Act, on the condition that he
 - a) shall attend the police station as and when called by the Investigating Officer on written notice, till filing of the charge-sheet
 - b) shall not involve in any similar offence.

(S. G. MEHARE)
JUDGE