

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

BAIL APPLICATION NO.74 OF 2023

BALIRAM GANGARAM GHORPADE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. M. D. Narwadkar
APP for Respondent: Mr. S. P. Sonpawale

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CORAM : S. G. MEHARE, J.

DATE : 13.02.2023

PER COURT :

1. Heard learned counsel for the applicant and learned A.P.P. for the state.

2. As per the seizure memo, the police have seized 61 Kilogram of Ganja weighed with flowering tops of cannabis plant, stems, leaves and seeds. In an inventory prepared before the Magistrate, total weight of said cannabis plant was 54 Kg. The chemical analyzer report reveals that the articles packed in cloth parcel were having green colour leaves, stalk, stem and roots. When cannabis plants were weighed it was also containing the soil, and the flowering or footing tops were not separated. In such a situation, a consistent view has been taken by this Court that it is a material defect in the prosecution case. Therefore, Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 would not be applied. In the

circumstances, it is difficult to accept the case of the prosecution that quantity of alleged Ganja was commercial. Since section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 would not apply, the application may be decided on merits.

3. Perused the charge sheet. Immediately after raid the alleged cannabis plants were seized. Nothing remain to be recovered from the applicant. There are no antecedents to his discredit. In such a situation, it would be inappropriate to keep the applicant behind bar. Hence, the following order.

ORDER

- (i) The Bail Application is allowed.
- (ii) The applicant Baliram Gangaram Ghorpade, be released on bail on executing P.B. and S. B. of Rs. 50,000/- with one solvent surety in the like amount in Crime No. 122 of 2021 registered at Kuntur Police Station, Taluka Naigaon, District Nanded for the offences punishable under Sections 20(a) (b) of Narcotic Drugs and Psychotropic Substance Act, 1985 on the conditions that :-
 - (a) The applicant shall not involve in the similar crime.
 - (b) The applicant shall attend the trial on each effective date.

(S. G. MEHARE)
JUDGE