

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

935 BAIL APPLICATION NO.76 OF 2023

KARBHARI SHAMLAL GUSINGE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Sarkate Sunil Janardhan.
APP for Respondent-State : Mr. S. P. Deshmukh.
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CORAM : S. G. MEHARE, J.
DATE : 31.01.2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent-State.
2. The Excise Officer had received the information of cultivating the cannabis plants in the field of the applicant when they were raiding in another field. Therefore, the information was immediately given to the Superior Officer. He granted him permission to conduct the raid. Accordingly, the raid was conducted. Total 81 k.g. of cannabis plants with soil attached to the plants were weighed.
3. This Court has consistently taken a view considering the definition of the term '*Ganja*' that where the plants are weighed without separating flowering tops, section 37 of the

NDPS Act would not come in the way while granting the bail. The articles were containing flowering tops mixed with pieces of stalks, stems, leaves, seeds and also the soil. In view of the consistent view in the cases of *Sandip Ashok Raut Vs. The State of Maharashtra in Bail Application No.2522 of 2014, dated 25.03.2015*, *Hari Mahadu Valse Vs. The State of Maharashtra in Bail Application No.2299 of 2019, dated 29.07.2021* and *Sanjay Mohan Garad Vs. The State of Maharashtra in Bail Application No.459 of 2021, dated 23.11.2021* at Principal Seat at Bombay, this Court is of the view that there are material defects in the prosecution case as regards the actual quantity of the narcotic drugs. In view of the said facts, the applicants were granted bail. The prosecution is not sure about the quantity of the narcotic drugs. That apart, nothing has to be recovered from the applicant. There are no antecedents to his discredit. For the above reasons, the application deserves to be allowed. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant **KARBHARI SHAMLAL GUSINGE** be released on bail on furnishing P.B. and S.B. of

Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount, in Crime No.329 of 2022, registered by State Excise Department, Flying Squad, Aurangabad (Phulambri Police Station, Aurangabad), for the offences punishable under Sections 20(a)(b)(i)(ii) (c) of the N.D.P. S. Act, on the following conditions:

- (a) The applicant shall not involve in the similar offence in future.
- (b) He shall not tamper with the prosecution witnesses.
- (c) He shall attend the Police Station as and when called by the Investigating Officer on written notice.

(S. G. MEHARE, J.)

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vmk/-