

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

910 BAIL APPLICATION NO.235 OF 2023

BABAN POMA CHAVAN
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Jadhav Satej S.
APP for Respondent-State : Mr. K. S. Patil.
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CORAM : S. G. MEHARE, J.
DATE : 02.03.2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent-State.
2. The prosecution case is that the police raided the field of the applicant. They found the cannabis plants in the field. They uprooted 58 cannabis plants. Initially, it was weighing around 70 k.g. However, after around three days, the weight was reduced by 11 k.g. The prosecution has no case that they have separated the flowering tops from the cannabis plants. The plants were weighed with seeds, leaves, flowering tops etc.
3. The consistent view of this Court is that in order to determine the commercial quantity, the flowering tops shall be separated from the cannabis plants. If it is not so, Section 37 of

the NDPS Act would not apply. Considering the cannabis plants weighed with seeds, leaves and stems, it is doubtful whether it was a commercial quantity. In the facts and circumstances of the case, Section 37 of the NDPS Act would not attract. That apart, the FIR reveals that the Investigating Officer had a secret information about planting cannabis plants in the field. It is not the case that suddenly the police had to take an action under the NDPS Act. Therefore, compliance of Section 42 was obligatory. Instead of complying with Section 42 of the NDPS Act, the telephonic intimation was given to the Superintendent of Police and Sub Divisional Police Officer and he gave him permission on telephone. This is not the mandate of Section 42(1) of the NDPS Act. These two legal points which are mandatory have not been followed. Therefore, the applicant deserves bail. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant **BABAN POMA CHAVAN** 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.519 of 2022, registered by Police Station Badnapur,

District Jalna, for the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on the following conditions :

- (a) The applicant shall not tamper with the prosecution witnesses.
- (b) He shall attend the trial on each and every effective date.
- (c) He shall not involve in similar crime.

(S. G. MEHARE, J.)

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vmk/-