

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

**947 BAIL APPLICATION NO.608 OF 2023**

ASHOK BHAGAJI KAPSE  
VERSUS  
THE STATE OF MAHARASHTRA

...  
Advocate for Applicant : Mr. S. R. Bagal h/f Mr. Gadegaonkar  
Bharat N.  
APP for Respondent-State : Mr. K. S. Patil.  
...

**CORAM : S. G. MEHARE, J.**  
**DATE : 19.04.2023**

**PER COURT :-**

1. Heard the learned counsel for the applicant and the learned APP for the respondent-State.
2. The applicant is seeking bail in Crime No.378 of 2022, registered at Temburni Police Station, District Jalna, for the offences punishable under Section 8(c) and 20 of the N.D.P.S. Act.
3. In a raid taken in the field of the applicant, the Investigating Officer uprooted the cannabis plants and weighed with the soil, stems etc. without separating the flowers and fruiting tops. The total weight of the cannabis plants was 38.208 k.g.

4. This Court has taken a consistent view that weighing the cannabis plants without separating the flowering or fruiting tops raises a doubt about the commercial quantity of *Ganja*. This Court in case of *Dattu Shankar Shinde Vs. State of Maharashtra and another at Principal Seat at Bombay in Bail Application No.852 of 2021, dated 17.03.2022* has observed that the prosecution has not ascertained as to how much is the exact weight of “*Ganja*” or cannabis plants recovered at the instance of the applicant allegedly cultivated in his field. Admittedly, the police did not segregated the soil attached to the roots, stems, leaves and flowering tops. Therefore, it cannot be said that the alleged quantity of *Ganja* seized was a commercial quantity. Therefore, Section 37 of the N.D.P.S. Act would not attract. Since there was no bar of Section 37, the case is to be dealt with on the facts.

5. The raid was successful. Nothing is remained to be recovered. The applicant was taken in the custody. He was interrogated and sent to M.C.R. Now his detention would be fruitless. Therefore, the application deserves to be allowed. Hence, the following order :

**ORDER**

- (i) Bail Application is allowed.
- (ii) Applicant **ASHOK BHAGAJI KAPSE** 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.378 of 2022, registered at Temburni Police Station, District Jalna, for the offences punishable under Section 8(c) and 20 of the N.D.P.S. Act, on the following conditions :
  - (a) The applicant shall attend the trial on each and every effective date.
  - (b) He shall not involve in a similar crime.

**(S. G. MEHARE, J.)**

...

vmk/-