

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

925 BAIL APPLICATION NO.611 OF 2023

SUKHDEO BHAURAO KAPSE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Gadegaonkar Bharat N.
APP for Respondent-State : Mr. S. P. Deshmukh.
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CORAM : S. G. MEHARE, J.
DATE : 20.04.2023

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.377 of 2022, registered at Tembhurni Police Station, District Jalna, for the offences punishable under Section 8(c) and 20 of the N.D.P.S. Act.
3. The raid was taken in the field of the applicant. The police uprooted the cannabis plants and weighed with the soil, stems, leaves etc. without separating the flowers and fruiting tops. The total weight of the cannabis plants was 327.265 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. All the samples were collected. The applicant is permanent resident of village Delegavan, Taluka Jafrabad, District Jalna. There were no antecedents to his discredit. The Investigation has been completed and charge sheet is also filed. The trial may take its time. Therefore, the application deserves to be allowed. Hence, the following order :

ORDER

- (i) Bail Application is allowed.

(ii) Applicant **SUKHDEO BHAURAO KAPSE** be released on bail on furnishing PB. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount, in Crime No.377 of 2022, registered by Police Station Tembhurni, District Jalna, for the offences punishable under Sections 8(c), 20 of the N.D.P.S. Act, 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.

(S. G. MEHARE, J.)

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vmk/-