

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1271 OF 2023

1) RAMESH S/O. CHANGDEV MURUMKAR
(2) YUVRAJ S/O. YASHWANT PAWAR
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Chaitanya C. Deshpande
APP for Respondent : Mr. S. P. Deshmukh
...

CORAM : S. G. MEHARE, J.

DATE : 10-08-2023

PER COURT :-

1. Leave granted to correct the crime number in the application. Amendment be carried out forthwith.
2. Heard the learned counsel for the applicants and the learned A.P.P. for the respondent/State.
3. The applicants seek bail in C.R.No.0288 registered with Nardana Police Station, District Dhule, for the offences punishable under Sections 8(C), 20(B)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "NDPS Act").
4. On secrete information to the concerned police station, a trap was arranged. One Suzuki Car bearing registration No. MH-14-CX/9007 was tried to be intercepted at Malich Police Chouki.

However, said car did not stop. The police chased the car and subsequently stopped it. From the dickey of that car, the fifteen bags containing contraband were discovered. The police seized those fifteen bags and packed in two polythene bags. The total weight of the so-called Ganja was 24.690 Kgs including greenish leaves, seeds and powder of stalk.

5. The learned counsel for the applicant would argue that the so-called contraband recovered from the dickey of the car was not segregated. On the contrary, it was mixed in two bags. Therefore, it is doubtful whether so-called Ganja is of commercial quantity. He would rely on the case of *Ibrahim Khwaja Miya Sayyed @ Raju Versus The State of Maharashtra (Bail Application No.1296 of 2022, dated 17.03.2023)*, wherein this Court has observed that the forensic report reveals that flowering/fruited tops, seeds, leaves and stalks were received in a sealed packet. The report reveals that the contraband, which was recovered from the applicant is 'Ganja' within the meaning of Section 2(iii)(b) of the N.D.P.S. Act. Referring the term 'Ganja', it has been further observed that a plain reading of this section would reveal that seeds and leaves would not be covered under the definition of 'Ganja' unless they are accompanied by the flowering or fruited tops of the Cannabis plant. The total weight of the substance which was seized was 21 Kgs. and that includes the weight of leaves, seeds and stalks, which *prima facie* were not accompanied by the flowering or

fruiting part. Since the contraband weighed together without quantifying the weight of the flowering or fruiting tops, casts a doubt whether 'Ganja' seized from the applicant was of commercial quantity to attract provision under Section 20(c) of the N.D.P.S.Act.

6. In nut-shell, the learned counsel for the applicant would argue that since the contraband was not properly weighed by segregating it, the forensic report cannot be believed to be correct that it was 'Ganja' as defined in Section 2(iii)(b) of the N.D.P.S. Act. The so-called contraband weighed was closed to the commercial quantity. Hence, it raises serious doubt. The rule granting bail in the case of commercial quantity and below the commercial quantity are different. Hence, the applicant may be granted bail.

7. The learned A.P.P. has placed on record the forensic laboratory report dated 08.06.2022 which indicates that two bags containing the pieces of loose bags and seeds in polythene bags were received. The recovery panchnama reveals that the entire contraband was divided into two bags including the powder of stalks, green leaves and seeds.

8. Admittedly, the contraband seized was not segregated. The flowering tops and flowers were not weighed separately and directly sent to C.A. for forensic laboratory.

9. The facts of the case of *Ibrahim Khwaja Miya Sayyed @ Raju (supra)* were similar to the facts of this case. Same technical defects were here-in the case also. The view as regards to the quantity of Ganja based upon its definition is consistent. Since it raises doubt about quantity of the so-called seized contraband, the legal impediment provided under Section 37 of the N.D.P.S. Act would not attract. In the facts and circumstances of the case, the application deserves to be allowed. Hence, the order:-

- i) The application is allowed.
- ii) Applicants No. (1) Ramesh s/o. Changdev Murumkar and (2) Yuvraj s/o. Yashwant Pawar be released on bail, on furnishing PB and SB of Rs.50,000/- each, with one solvent surety of the like amount, in C.R.No.0288 registered with Nardana Police Station, District Dhule, for the offences punishable under Sections 8(C), 20(B)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, on the conditions that;
 - (a) They shall not tamper with the prosecution witnesses.
 - (b) They shall attend the trial on each and every effective date.
 - (c) They shall refrain from involving in the similar crime in future.

**(S. G. MEHARE)
JUDGE**