

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

BAIL APPLICATION NO. 1277 OF 2023

Hanumant Arjun Pathare
Age: 48 years, Occu: Agriculture
R/o Balewadi, Tq. & Dist. Beed

... Applicant

Versus

The State of Maharashtra
(Through Police Inspector,
Ambhora Police Station,
Tq. & Dist. Beed.

... Respondent

...

Mr. D. K. Rajpur, Advocate for the Applicant
Mr. K. S. Pati, APP for the Respondent/State

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 08.09.2023

PER COURT :

1. Heard the learned Advocate for the applicant and learned APP for the respondent/State.
2. By this application, the applicant seeks regular bail in connection with Crime No.205/2022 registered with Ambhora Police Station, Tq. & Dist. Beed [in Special Case No.69/2023 pending before the Special Judge, Beed] for the offences punishable under Sections 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 [for short 'the Act'].

3. The investigation was set in motion on the information given by Dyaneshwar Bhimraj Kuklare (Asst. Police Inspector), Ambhora Police Station. He states that upon receipt of a secret information that in village Balewadi, the accused persons are cultivating ganja. A raid was arranged. On visit to the land situated in survey no.7 within the vicinity of Balewadi village and on inspection, it was found that, the ganja has been cultivated. The ganja were seized and kept in 16 different sacks. It was weighed 71 Kg and 700 gram. A panchnama was carried. In pursuance of the aforesaid offence, the applicant has been arrested. After due investigation, charge-sheet is also filed. The applicant is behind the bars since 28/03/2023. His application for grant of bail has been rejected by the Special Court vide order dated 07/07/2023.
4. Mr. Rajput, learned Advocate appearing for the applicant would submit that the applicant is not owner of the field from where the alleged recovery of cannabis plants is made. He would submit that the land stands in the name of his father. By inviting attention of this Court to the spot panchnama, he would submit that, the plants along with roots and seeds are uprooted and those are seized. He would therefore submit that in absence of segregation of the various parts of plants, it cannot be said that, the seized material is ganja within the meaning of provisions of the Act. He would therefore submit that the bar under Section 37 of the Act could not attract in the facts of the present case. The further detention of the applicant would not be necessary. Hence, applicant is entitled to grant the bail.

5. Learned APP however vehemently opposes the bail application. He would submit that the large quantity of 70 kgs has been seized from the field of the applicant. The seized quantity of the ganja is commercial in nature. The bar under Section 37 of the Act would attract in such cases to the applicant. Hence, he urge to dismiss the application.

6. Having considered the submissions advanced, apparently, FIR and seizure panchnama depict that police have seized the plants of cannabis along with its roots and soil. Even in the inventory certificate by learned Magistrate at Beed dated 12/12/2023 depicts that there was no segregation of the plants, leaves and other parts of the cannabis tree. At this stage, it is appropriate to refer to the definition of the ganja under the Act, which states as under:

“ 2. Definition: In this Act, unless the context otherwise requires : -

 - (i)
 - (ii) ...
 - (iii) cannabis (hemp)” means :
 - (a) ...
 - (b) ganja, that is, the flowering of fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever, name they may be known or designated”

7. Looking to the definition as provided under Section 2(iii)(b) of the Act, the flowering of fruiting tops of the cannabis plant excluding the seeds and leaves when not accompanied by tops can be considered as ganja. Apparently, in the present case, the plants were uprooted from the roots and those were weighing approximately 70 kgs. There was no segregation to find out exact quantity of contraband substance. This Court. in case of

Hari Mahadu Valse Vs. The State of Maharashtra [Bail Application No.2299/2019] dated 29/09/2021 and in case of Popat Goverdhan Nagode Vs. The State of Maharashtra [Bail Application No.1986/2022] dated 03/01/2023, discussed the aforesaid provisions of the Act in similar situation where there was no segregation of flowering buds from the pieces of stalks stems, leaves and seeds and recorded that in absence of segregation, the substance cannot be termed as ganja within the meaning of Section 2(iii)(b) of the Act. Perusal of inventory certificate along with spot panchnama, in the present case, depicts that no attempt is made to segregate the substances. In that view of the matter, bar under Section 37 of the Act would not attract. The case is made out to grant the bail. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, namely, Hanumant Arjun Pathare be released on bail i in connection with Crime No.205/2022 registered with Ambhora Police Station, Tq. & Dist. Beed [in Special Case No.69/2023 pending before the Special Judge, Beed] for the offences punishable under Sections 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 on furnishing P.B. and S.B. of Rs.1,00,000/- (Rs. One Lakhs only) on the following conditions:
 - a. The applicant shall not leave the State of Maharashtra without permission the Sessions Court.

- b. He shall attend each and every effective date before the Sessions Court.
- c. He shall not indulge in similar activity.
- d. He shall not tamper with the prosecution evidence or contact witnesses named in charge-sheet.

(iii) Bail Application is disposed of accordingly.

[S. G. CHAPALGAONKAR]
JUDGE

Sameer