

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

37 BAIL APPLICATION NO.1354 OF 2023

VIJAY DNYANDEO BIBE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. C.C. Deshpande
APP for Respondent : Ms. P. V Diggikar

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CORAM : S. G. CHAPALGAONKAR, J.
Dated: August 28, 2023

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PER COURT :-

1. The applicant is seeking regular bail in connection with Crime No.106 of 2023 registered with Shirpur Police Station, District Dhule for the offence punishable under section 20(C) and 22 (C) of the NDPS Act.

2. It is the case of the prosecution that on receipt of the secret information regarding arrival of two persons possessing 'Ganja' on motorcycle necessary steps were taken to intercept the vehicle. Permission of S.P. Dhule was taken to call to Gazetted Officer, weight measurer, photographer, panch etc. On interception of the motorcycle, a pillion rider was found holding white colour gunny bag. They disclosed their names. On search 11 packets of Ganja i.e. 21.9 kg was seized.

aaa/-

Accordingly, the complaint was filed and accused were arrested. The applicant approached the learned Sessions Court for grant of bail. However, his application came to be rejected vide order dated 18.4.2023 and the applicant is behind bar since 22.3.2023.

3. Learned advocate appearing for the applicant would submit that panchnama as well as other documents on record would show that the green seed, leaves, flowering tops were collectively seized and there was no segregation. Actual quantity of the ganja cannot be detected in absence of segregation. By inviting attention of this Court to section 2(iii) (b) of NDPS Act he would submit that definition of Ganja would not include green leaves, alongwith flowering of fruiting tops and plants. He would further submit that in view of the aforesaid facts, prosecution cannot contend that the applicant was in possession of commercial quantity of Ganja. Mr. Deshpande has further relied upon the order of this Court in **Bail application no.1296 of 2022** in case of *Ibrahim Khwaja Miya Sayyed @ Raju Versus The State of Maharashtra dated 17.3.2023 as well as the order in BA No.1271 of 2023 in case of Ramesh Murumkar and another Vs. State of Maharashtra*

aaa/-

dated 10.8.2023 to contend that in absence of segregation of the contraband bar under section 37 of the NDPS Act would not attract.

4. Learned APP vehemently opposed the prayer. She would submit that more than 21 kgs contraband substance has been seized from the accused. She fairly admits that report of the C.A. is still awaited. She would submit that there is statutory compliance of section 42 and 50 of the NDPS Act. So, prima facie there is substantial evidence against the applicant to make out charged .

5. Having considered the submissions advanced and perusal of the FIR, it is evident that 11 packets containing leaves, flowers were seized from the applicant and admittedly, there is no segregation. Section 2(iii)(b) of the NDPS Act defines Ganja, which reads thus :-

“Sec. 2 :-

(iii) "cannabis (hemp)" means -

(b) ganja, that is, the flowering or 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; and

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis, or any drink prepared therefrom;”

aaa/-

6. Considering the definition as stated above, flowering or fruiting tops seeds and leaves taken together would not constitute the definition of Ganja. There is nothing on the record to indicate that segregation of the contraband material was done before sending it to the CA. Admittedly, report of the C.A. is not available till date. This Court in similar circumstances in the case of *Ibrahim Sayyed and Ramesh (referred supra)* took a view that in absence of scientific segregation leaves, seeds and stock accompanied by flowering and top would not constitute Ganja within the meaning of definition under the NDPS Act. For the aforesaid reasons, bar under section 37 of the Act would not attract. The applicant is behind bar for more than 5 months. In the aforesaid circumstances, case is made out to grant bail subject to certain conditions. Hence, the order.

ORDER

- I. Criminal Bail Application is hereby allowed.
- II. The applicant VIJAY DNYANDEO BIBE be released on bail in connection with Crime No.106 of 2023 registered with Shirpur City Police Station, District Dhule for the offence punishable under section 20(C) and 22(C) of the N.D.P.S. Act on furnishing

P. R. in the sum of Rs.50,000/- (Rs. Fifty Thousand) with one surety of the like amount on the following conditions.

- a] The applicant shall not tamper with the prosecution evidence.
- b] The applicant shall not leave the State of Maharashtra without prior permission of the Special Court.
- c] The applicant shall not indulge in similar activities / offence.
- d] The applicant shall attend the concerned police station once in a week i.e. on every Monday between 11 am to 2 pm till filing of the charge-sheet.
- e] The applicant shall attend dates of the trial without fail.

III. Bail application is accordingly disposed off.

(S.G. CHAPALGAONKAR J.)

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