

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

BAIL APPLICATION NO.1363 OF 2023

Subhash Baburao Patil,
Age: 70 years, Occu.: Agriculture,
R/o. Savkeda Khurd, Tq. Pachora,
Dist. Jalgaon.

..Applicant

Versus

The State of Maharashtra

..Respondents

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Mr. Joydeep Chatterji, Advocate for the Applicant.
Mr. K. S. Patil, APP for Respondent-State.

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CORAM : S. G. CHAPALGAONKAR, J.
DATE : 24th AUGUST, 2023.

ORDER:-

1. The applicant seeks grant of regular bail in connection with Crime No.0352/2022, dated 24.11.2022 registered with Pimpalgaon (Hare) Police Station, Tq. Pachora, Dist. Jalgaon for the offences punishable under Section 8(b), 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'N.D.P.S., Act, 1985').

2. The case of prosecution is that on receipt of secrete information, the cannabis plants (Ganja) was seized from applicant. It was in the form of uprooted plants, stored in plastic and jute bags. On seizure, weight of all bags, noted to be 581 Kgs. The procedure under Section 42 and 50 of the N.D.P.S., Act, 1985 was followed. As per the inventory prepared by the Judicial Magistrate First Class, Pachora, total weight of 30 bags containing the plants found 469 Kgs. The applicant was accordingly arrested. On completion of investigation, the charge-sheet is filed.

The applicant had moved an application for Regular Bail before the Sessions Court, that has been rejected vide order dated 17.07.2023.

3. Mr. Chatterji, learned Advocate appearing for the applicant would submit that the prosecution has seized bags containing raw cannabis plants contained in bags, the gross weight of which is shown to be 581 Kgs. He would submit that the report of the Chemical Analysis is not received till this date. He would submit that the seized mudde-mal does not fall within definition of Section 2 (iii) (b) of the N.D.P.S., Act, 1985. He contends that the Investigating Officer has not drawn samples independently. He would further submit that the inventory prepared by the Magistrate would not be sufficient to infer that the applicant was in possession of the Ganja as defined under Section 2 (b) (c) of the N.D.P.S., Act, 1985, since the definition stipulates flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) as Ganja. He would submit that there is nothing to indicate that the substance seized can be characterized as Ganja within the meaning of Section 2 (b) (c) of the N.D.P.S., Act, 1985 or It passes test of commercial quantity.

4. Mr. Chaterjee would further invite attention of this Court to the veracity of quantity in the documents. Mr. Chatterji relying upon the judgments of this Court in the matter of ***Shaikh Mohammad Shaikh Amir Vs. The State of Maharashtra (Bail Application No.1 of 2020*** dated 11.02.2020), so also judgment in the matter of ***Dagdiram S/o Devrao Mundhe Vs. The State of Maharashtra (Bail Application No.637 of 2021)*** with another connected Bail Application dated 20.08.2021, so also judgment in the matter of ***Ibrahim Khwaja Miya Sayyed @ Raju Vs. The State of Maharashtra (Bail Application No.1296 of 2022*** dated 17.03.2023) would submit that in

absence of segregation of material seized, the substance i.e. entire plant with seeds and leaves would not constitute Ganja. Further weight of the seized material cannot be construed to be the weight of Ganja in absence of segregation. He would therefore urge that Section 37 of the N.D.P.S., Act, 1985 has no application in facts of this case

5. Per contra, the learned APP opposes the prayer stating that admittedly the huge quantity of cannabis plants has been recovered from the applicant. Considering the quantity of recovered plants, there is no doubt that it is commercial quantity. Hence, bar under Section 37 of the N.D.P.S., Act, 1985 would attract in such cases.

6. Having considered the submissions advanced, it is evident that there is *prima facie* material to indicate that huge quantity of cannabis plants approximately 581 Kgs has been seized from the applicant. The inventory certificate dated 28.11.2022 issued by the Judicial Magistrate First Class, Pachora would show that weight of substance is reduced to 469 Kgs, as the same has been dried during the period from the date of seizure i.e. 24.11.2022 till the date of issuance of inventory certificate. The definition of Ganja given in Section 2 (b) (c) of the N.D.P.S., Act, 1985 defines it as the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) and “any mixture, with or without any neutral material, or any of the above forms of cannabis or any drink prepared therefrom”. It is a matter of record that the entire plants, which were allegedly found during the seizure were weighed without adhering to the definition of Ganja as given in Section 2 (b) (c) of the N.D.P.S., Act, 1985. It is submitted on behalf of applicant that in light of the definition, the entire plants of cannabis i.e. stems, branches, leaves, roots do not constitute Ganja as defined under the N.D.P.S., Act, 1985. Pertinently, Chemical

Analysis report is not made part of the charge-sheet. Even what is sent for Chemical Analysis is the plants without segregation of flowering or fruiting tops of the cannabis. In this background, rigour of Section of N.D.P.S., Act, 1985 will not apply.

7. This Court in the case of ***Dagdiram S/o Devrao Mundhe Vs. The State of Maharashtra (Bail Application No.637 of 2021)*** dealt with similar issue and recorded that in absence of segregation of the flowering or fruiting tops of cannabis plants, the seized plants cannot be termed as Ganja within the meaning of Section 2 (b) (c) of the N.D.P.S. Act, 1985. Similar view is reiterated by this Court in case of ***Shaikh Mohammad Shaikh Amir Vs. The State of Maharashtra (Bail Application No.1 of 2020)***. The learned Advocate appearing for the applicant further relies upon the order of this Court in the matter of ***Ibrahim Khwaja Miya Sayyed @ Raju Vs. The State of Maharashtra (Bail Application No.1296 of 2022)*** and ***Ramesh Changdev Murrumkar and Another Vs. The State of Maharashtra (Bail Application No.1271 of 2023)*** which reiterate the aforesaid legal position.

8. Applying principles of law espoused in judgments relied on behalf of the applicant, in absence of segregation of the seized plants from flowering or fruiting tops, the court would not be in position to draw definite conclusion regarding exact quantity of contraband substance. The material relied by prosecution in charge-sheet falls short to throw light on this crucial aspect. In absence evidence regarding exact quantity of prohibited material and its scientific segregation, no presumption can be drawn about existence of commercial quantity of seized material that would attracts bar under section 37 of the N.D.P.S., Act, 1985. Unless prosecution brings on record exact weight of contraband substance after its segregation from cannabis plants and fruiting tops,

prosecution cannot bank upon section 37 of the N.D.P.S., Act, 1985. In that view of the matter, case is made out for grant of bail. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Subhash Baburao Patil be released on bail in Crime No.0352/2022 dated 24.11.2022 registered with Pimpalgaon (Hare) Police Station, Tq. Pachora, Dist. Jalgaon for the offences punishable under Section 8(b), 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'N.D.P.S., Act, 1985') on executing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) each on following condition:
- a. The applicants/accused shall not tamper with the prosecution evidence.
 - b. He shall not commit similar offence in future and shall maintain law and order forever.
 - c. He shall not leave State of Maharashtra without prior permission of the Court till conclusion of the trial.
 - d. The applicants/accused shall attend the proceedings before the Sessions Court.
- (iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE