

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1791 OF 2022

SHRIKANT LAXMAN BANSODE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Manikrao L. Wankhade
APP for Respondent : Mr. S. B. Narwade
...

CORAM : S. G. MEHARE, J.

DATE : 04-01-2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent/State.
2. The applicant was coming in a car from Andhra Pradesh to Aurangabad having contraband cannabin/Ganja weighing 37 Kg. 300 gm. It has been alleged against the applicant that a case for the offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "NDPS Act") has already been registered against him. The seized contraband was sent for Chemical Analyzer's report.
3. The applicant is claiming bail on the ground that Section 50 of the NDPS Act has been violated. Therefore, Section 37 of the NDPS Act would not attract. That apart, the Chemical Analyzer's

report reveals that the contraband forwarded for analysis containing seeds and stalks. Therefore, unless the flowering tops are separately weighed, it cannot be accepted that the so-called recovery of the contraband was of commercial quantity.

4. The learned A.P.P. has strongly opposed the application. He would argue that since the contraband was recovered from the dickey of the vehicle, Section 50 of the NDPS Act would not attract. *Prima facie*, quantity recovered from the applicant is commercial. The C.A. report supports the prosecution case that the seized contraband was Ganja. He prayed to dismiss the application.

5. Two legal points are to be considered in this case. Whether Section 50 of the NDPS Act has been complied with and whether the quantity allegedly recovered from the custody of the applicant was commercial. The learned A.P.P. is correct in submitting that the law is well settled that if physical search of the accused is not taken and the contraband has been recovered from the place elsewhere, Section 50 of the NDPS Act would not attract. However, the first information report as well as notice allegedly served upon the applicant under Section 50 of the NDPS Act reveals that he was informed that the Police Inspector Avinash Aaghav was the gazetted officer, whether he wanted to have his search and search of the vehicle before any other officer. The contents of the notice also indicates that the applicant was

informed about his physical as well as search of the vehicle.

6. The applicant replied them that he may take his personal search as well as search of the vehicle. The Honourable Apex Court in the case of ***State of Rajasthan Versus Parmanand and another, (2014) 5 SCC 345***, in paragraph No.15 has observed that *“if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application”*.

7. The seizure panchnama as well as the first information report does not disclose that the applicant was searched personally. In view of this fact, Section 50 of the NDPS Act would not attract in this case. It is also well settled of law that to delaying the commercial quantity, if contraband is sent to Chemical Analysis without quantifying flower tops, that *prima facie* raises a doubt, whether the contraband/ganja seized was of commercial quantity, to attract Section 20(c) of the NDPS Act. The C.A. report does not show that the flowering tops were separately weighed. The offence under NDPS Act is mostly technical and provides for the serious punishment. Hence, every care has to be taken by the Investigating Officer to comply with the various provisions under the NDPS Act. Contraband was sent to the C.A. a day after the alleged seizure. However, whether the quantity was commercial, is doubtful. Since the quantity of the alleged

contraband can not be said to be a commercial, bail application would be dealt with differently and doubt may be raised. Hence, applicant deserves bail.

8. The applicant is languishing in jail since 08.06.2021. The material investigation has been completed. The applicant may be released on bail on certain stringent conditions. Thus, the following order:-

- i) Application is allowed.
- ii) Applicant Shrikant Laxman Bansode be released on bail, on furnishing PB and SB of Rs.2,00,000/- (Rs. Two Lakh) with two solvent surety of the equal amount, in Crime No.244 of 2021, registered with M.I.D.C. CIDCO Police Station, District Aurangabad, for the offence punishable under Sections 20(b) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, on the conditions that;
 - (a) He shall attend the police station on every first Monday of the month between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial.
 - (b) He shall attend the trial on each and every effective date of hearing till the conclusion of the trial.
 - (c) He shall not involve in the similar offence.

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