

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

38 BAIL APPLICATION NO.1954 OF 2023

RAJU @ RAJENDRA SUDHAKAR FOLANE (NAIK)
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. C.C. Deshpande h/f S.S. Rathi
APP for Respondent : Mr. A.S. Shinde

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CORAM : S. G. CHAPALGAONKAR, J.
Dated: December 06, 2023

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PER COURT :-

1. The applicant seeks regular bail in connection with Crime No.0295 of 2023 registered with Sillod Rural police station, District Aurangabad for the offences punishable under sections 20, 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short hereinafter referred to as 'NDPS Act').

2. The investigation was set in motion on the basis of the information given by Mr. Sitaram Mhetre, who is a police inspector attached to police Station, Sillod. He alleges that on 4.10.2023 secret information was received that accused has cultivated cannabis in his field bearing gat no.69 situated at Uphali. Immediately necessary steps were taken as per the provisions of NDPS Act and Rules. Information was transmitted to Sub Divisional Police Officer in terms of section 42(1) of NDPS Act. Squad was prepared including panch witnesses. On visit to the field, they found standing cannabis

alongwith cotton plants. Total 38 cannabis plants were seized which includes roots, branches. Sample was segregated and sealed in a plastic bag. Sample includes leaves, flowers etc of the plant. Total weight of the 38 plants was found to be 31.320 kgs. The applicant came to be arrested being the cultivator and he is behind the bar since 4.10.2023. His prayer for grant of bail has been rejected by the Special Court vide order dated 23.10.2023.

3. Mr. Deshpande learned advocate appearing for the applicant would submit that although FIR alleges that 31.320 kg Ganja have been seized from the field of the applicant, it was a complete plant without segregation. He would urge that to constitute "Ganja" in terms of section 2 (iii)(b) of NDPS Act, 1985, flowering or fruiting tops of cannabis plant (excluding seeds and leaves when not accompanied by tops) has to be considered. He would therefore submit that seizure of the plant cannot be equated with the seizure of the Ganja within the meaning of section 2 (b)(c) of the NDPS Act. In support of his submissions, he relies upon the order passed by the Supreme Court in case of **Yusuf @ Asif Vs. State in Criminal Appeal No.3191 of 2023** dated 13.10.2023, the order passed by this Court in ABA No.2173 of 2022 in case of **Kunal Dattu Kadu Vs. Union of India**, the order dated 10.8.2023 in BA No.1271 of 2023 in case of **Ramesh Changdev Murumkar and another Vs. State of Maharashtra** and the order dated 24.8.2023 in BA No.1363 of 2023 in the matter of **Subhash Baburao Patil Vs. State of Maharashtra**. He would therefore

submit that Bar under section 37 of the NDPS Act would not attract in the present case. Quantity seized cannot be termed as commercial quantity. Hence, urges to release the applicant on bail.

4. Learned A.P.P. strongly opposes the prayer. He would submit that in the present case, the applicant found a cultivator of cannabis plants. Seizure is made from his field. Statement of adjacent owners confirms that the applicant is a cultivator. Therefore, he opposes the prayer for grant of bail.

5. Having considered the submissions advanced, apparently, it can be observed that what is being seized by the investigating agency is uprooted cannabis plant weighing about 32.320 kilograms. If the definition of Ganja under section 2(b)(c) of NDPS Act is considered, it stipulates flowering or fruiting of tops of the cannabis plant (excluding seeds and leaves when not accompanied by the tops) of Ganja. To constitute commercial quantity weight of seized Ganja must be 20 kgs., Panchnama do not show that there is segregation of actual Ganja from the uprooted plant at the time of seizure. Prima facie, it cannot be termed as commercial quantity. Looking to the ratio as laid down in the aforesaid judgments, prima facie bar under section 37 of the NDPS Act would not attract in the facts and circumstances of the case. Learned APP confirms that there are no criminal antecedents. In that view of the matter, further detention of the applicant would not be necessary. In that view of the matter, case is made out for grant of bail. Hence, the following order.

aaa/-

ORDER

- i. Bail Application is hereby allowed.
- ii. The applicant RAJU @ RAJENDRA SUDHAKAR FOLANE (NAIK) be released on bail in connection with Crime No.0295 of 2023 registered with Sillod (Gramin) police station, District Aurangabad for the offences punishable under sections 20, 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 on his furnishing P.B.&S.B. of Rs.1,00,000/- (Rs. One Lakh), on the following conditions :-
 - a] The applicant shall not tamper with the prosecution evidence in any manner.
 - b] The applicant shall not indulge into similar offence.
 - c] The applicant shall attend the concerned police station once in a week i.e. on every **Monday** between 10 am to 2 p.m till filing of the charge sheet.
 - d] The applicant shall co-operate with the investigating agency.
- iii. Bail application is accordingly disposed off.

(S.G. CHAPALGAONKAR)
JUDGE
