



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 81 OF 2023

SADASHIV DATTU DHOBALÉ

..APPLICANT

VS.

STATE OF MAHARASHTRA

..RESPONDENT

Mr. Dhairyasheel Sutar a/w Mr. Kiran G. Kulkarni, for the applicant.
Ms. Rutuja Ambekar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 05, 2023

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP for the State.
- 2.** This is an application for bail in respect of the offence punishable under sections 8(b), 8(c), 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the NDPS Act' for short) registered on 21/07/2022 vide C.R. No.195 of 2022 with Kamti Police Station, Solapur Rural. The date of the incident is 21/07/2022. The applicant was arrested on 21/07/2022.
- 3.** It is the case of the prosecution that cannabis was grown in the agricultural field of the applicant. The plants 21 in number were

uprooted. The same were put in two gunny-bags. At the time of seizer, the mud was removed and roots were cut. The gunny-bags weighed 21.830 kg and 22.300 kg. Samples were taken at the spot.

4. In the compliance i.e. certificate of inventory as per section 52-A of the NDPS Act, learned Judicial Magistrate First Class has recorded that two gunny-bags are having plants including leaves, branches and stems. There is no mention as regards flowering or fruiting tops of the cannabis. Section 2(iii)(b) of the NDPS Act defines ganja as under:

“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;”

5. Learned counsel for the applicant relied upon the decision of this Court (Aurangabad Bench) dated 08/03/2019 passed in Bail Application No. 211 of 2019. Paragraph 7 of the same reads thus :

“7. I have carefully considered the papers of the investigation. Though the offence is registered under Section 20(b) and 20(c) of the N.D.P.S. Act, when admittedly no Ganja was found and only cannabis plants were found to have been cultivated, particularly when there is no separate record in respect of the quantity of the flowering tops, at this stage it is doubtful if and how the offence would come under Clauses (b) and (c) of Section 20 of the N.D.P.S. Act. Prima facie the situation would be covered by clause (a) of that Section which provides for punishment upto 10 years for cultivating cannabis plants. Therefore, in the absence of any record in respect of

quantification, one cannot say that it was a commercial quantity and the provisions of Section 37 of the N.D.P.S. Act would not be attracted.”

6. For the similar reasons, the applicant can be enlarged on bail. There are no criminal antecedents reported against the applicant. The applicant was arrested on 21/07/2022 and is now in custody for more than 14 months. The investigation is complete. The charge-sheet has been filed. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Sadashiv Dattu Dhobale in connection with C.R. No. 195 of 2022 registered with Kamti police station, Solapur, Rural shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one or more sureties in the like amount.
- (c) The applicant shall attend the investigating officer of Kamti police station, Solapur, Rural once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not

tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

7. The application is disposed of.

(M. S. KARNIK, J.)