



Diksha Rane

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

BAIL APPLICATION NO.644 OF 2023

SAMIR ILYAS SAYYED

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Zehra Charania a/w. Adv. Ayaz Khan, Adv. Dilip Mishra
for the Applicant.

Ms. Veera Shinde, APP for the State.

PSI Satam B.E., Goregaon Police Station.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 12, 2023

P.C. :

1. Heard learned counsel for the applicant.
2. Learned APP opposed the application for bail.
3. This is an application for bail in respect of the offence punishable under Sections 8(c) read with 20(b)(ii)(C), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter "NDPS Act", for short) the registered on 4/6/2022 vide C.R. No.668/2022 with Goregaon Police Station.
4. The respondent received the information that one vehicle will be carrying contraband 'ganja'. On 3/6/2022, on the basis of such information, a three-wheeler tempo was intercepted which was occupied by the applicant. On search

of the vehicle one bag containing seven packets of contraband substance 'ganja' weighing 20.273 kgs. 'ganja' was recovered. The seven packets were separately sealed and kept in gunny bag.

5. According to learned APP, samples were drawn and sent to the Forensic Science Laboratory (FSL). Report is awaited.

6. The panchanama reveals that what was recovered was one bag which had seven packets containing leaves, flowers, buds and seeds 20.273 kgs of 'ganja'. The commercial quantity is specified under NDPS Act is 20 kgs. The applicant was found in possession of the contraband which was marginally above commercial quantity.

7. The contraband "cannabis" is defined under Section 2(iii) of the NDPS Act which reads as under:-

"2(iii) "cannabis (hemp) means -

(a) *charas*, that is, the separated resin, in whatever form whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;

(b) *ganja*, that is, the flowering of 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.”

Thus, the contraband, prima facie, which is weighed is not in terms of the definition of “cannabis”.

8. The applicant was arrested on 4/6/2022 and now is in custody for more than 14 months. In my opinion, the aforesaid circumstances are sufficient to get over the rigours of Section 37 of the NDPS Act. The investigation is complete. I am further satisfied that as there are no criminal antecedents reported against the applicant, it is unlikely that the applicant will commit any offence while on bail as in any case I propose to impose the conditions while so enlarging the applicant on bail. The trial is likely to take a long time to conclude. Further custody only will be by way of a pre-trial punishment in the facts and circumstance of the case. The applicant will face the consequences post-trial if found guilty. The applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Samir Ilyas Sayyed in connection with

C.R. No.668/2022 registered with Goregaon Police Station. 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 Goregaon police station once in a month on every first Monday of the month between 11.00 a.m. and 1.00 p.m. till the trial concludes.

(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.

(f) The applicant shall not leave the jurisdiction of Mumbai/Mumbai Suburban District without permission of the trial Court and the investigating officer.

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(h) The applicant shall surrender his passport, if any, to the investigating officer.

9. The application is disposed of.

(M. S. KARNIK, J.)