



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

BAIL APPLICATION NO.1203 OF 2023

AABID MUSHTAK ANSARI

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Deepa Amati Muttagi i/b. Adv. Munira Palanpurwala for
the applicant.

Mr. P. H. Gaikwad, APP for the State.

API Bhaskar Jadhav, LCB Thane Rural.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 7, 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(c) read with 20(C), 29 of the
Narcotic Drugs and Psychotropic Substances Act, 1985
(hereafter "NDPS Act", for short) registered on 13/1/2022
vide C.R. No. 0012/2022 with Shahpur Police Station. The
applicant was arrested on 13/1/2022.

3. There are in all three accused. The applicant is the
accused no.1. The vehicle, a Maruti Suzuki Swift VDi bearing

No.MH-03-AF-5485 was parked on the side of the highway facing towards Mumbai. The raiding party encircled the car on 12/1/2022 at around 9.00 p.m. One black colour sack was found under the driver seat and another black colour sack was on the rear side. The first sack contained 10 kgs of 'ganja' and second sack also contained 10 kgs of 'ganja'. On further search of the car 30 kgs of 'ganja' was recovered from the dickey.

4. Learned counsel for the applicant tried to contend that the applicant was only a driver and had no knowledge of the contraband.

5. Learned APP opposed the application and submitted that there are materials on record to indicate that the applicant was in regular touch of the other accused and he had knowledge about the contraband. Learned APP further submitted that the contraband seized is huge in quantity (50 kgs) which is much more than the commercial quantity.

6. The submission of learned counsel for the applicant which I found to be impressive is as regards the forensic report in respect of the 'ganja'. What was sent to the Forensic Science Laboratory was flowering fruiting tops

mixed with pieces of stalks, stems, leaves and seeds wrapped in polythene bag. The report reveals that the contraband which was recovered from the applicant is 'ganja' within the meaning of Section 2(iii) (b) of the NDPS Act. The term 'ganja' is defined in Section 2(b) 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. This Court has held that a plain reading of Section 2(iii)(b) would reveal that seeds and leaves would not be covered under the definition of 'ganja' unless they are accompanied by the flowering or fruiting tops of the cannabis plant.

7. What was received in the instant case was flowering fruiting tops mixed with pieces of stalks, stems, leaves and seeds. Thus, in view of the decisions of this Court in **Hari Mahadu Valse vs. The State of Maharashtra**¹, **Ibrahim Khwaja Miya Sayyed @ Raju vs. The State of Maharashtra**² and **Suresh Maruti Pawar vs. The State of Maharashtra**³, the present application deserves to be allowed. The quantity found is commercial quantity.

1 B.A.No.2299/2019

2 B.A.No.1296/2022

3 B.A.No.1599/2020

However, considering what has been stated herein above, the same is sufficient to get over the rigours of Section 37 of the NDPS Act.

8. Moreover, learned APP confirmed that there are no criminal antecedents reported against the applicant, therefore, it is not likely that the applicant will commit a similar offence in the future. The investigation is complete. The charge-sheet has been filed. The applicant is in pre-trial custody for one year and 8 months. In my opinion, the applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Aabid Mushtak Ansari in connection with C.R. No.0012/2022 with Shahpur Police Station, shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more sureties in the like amount.
- (c) The applicant shall attend the Investigating Officer of Shahpur police station 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.

(f) The applicant shall attend the trial regularly.

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

(h) The applicant shall not leave the State of Maharashtra without intimation to the investigating officer or without the permission of the trial Court.

(i) Suffice it to observe that the observations made are for the limited purpose of considering the question of bail and shall not influence the trial Court while considering the matter on merits.

9. The application is disposed of.

(M. S. KARNIK, J.)