



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

BAIL APPLICATION NO. 1837 OF 2023

MAHESH GORAKH SALUNKE

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Mithilesh Mishra a/w Adv. Raju Mate and Adv. Shrinath
Mate for the Applicant.

Ms. Veera Shinde, APP for the State.

R.A. Yadav, Asstt. Police Inspector, Sinhagad Police Station.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 06, 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) and 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, (hereafter "NDPS Act", for short) registered on 29/12/2017 vide C.R. No.3060 of 2017 with Sinhagadroad Police Station., Pune
- 3.** The applicant was arrested on 29/12/2017. The

applicant is now in custody for more than 5 years and 10 months. The applicant was found in possession of 84.025 kg of Ganja. The car in which the applicant was travelling was searched and from the dickey of the car, Ganja was found stuffed in 4 gunny bags. The seizure panchnama only shows that what was found from the possession of the applicant is the contraband Ganja. However, C.A. report dated 06/02/2018 reveals the description of the article contained in the parcels as "Yellowish brown coloured flowering tops mixed with pieces of stems, pieces of stalks, pieces of leaves and seeds put in polythene bag again put in an envelope labelled S-1, S-2, S-3 and S-4 respectively." No doubt, the result of the analysis is that the samples are of Ganja.

4. Learned APP opposed the application. It is submitted that the applicant is a habitual offender. My attention is invited to the 6 antecedents reported against the applicant. It is submitted that C.R. No. 3027 of 2009 of the Bharati Vidya Police Station and another C.R. No. 3065 of 2016 of the Sinhadgad Police Station are under the NDPS Act.

Learned counsel for the applicant submitted that these C.Rs. referred by learned APP are in respect of non-commercial quantities of Ganja. It is submitted by the learned counsel for the applicant that so far as other C.Rs. are concerned, they are not under the NDPS Act. Learned APP further submitted that what was found from the applicant was a commercial quantity of Ganja and it was a huge quantity. It is further submitted that the trial has commenced and the prosecution proposes to examine 11 witnesses. It is submitted that summons have been issued to 2 witnesses. It is further submitted that the trial be expedited instead of enlarging the applicant on bail considering the huge quantity of Ganja that is found on his person.

5. No doubt the trial has commenced, however, out of 11 witnesses who are to be examined by the prosecution, not a single witness has been examined. The applicant has been in custody for more than 5 years. It seems that the trial will not conclude any time soon. Learned counsel for the applicant relied upon **Kunal Dattu Kadu Vs. Union of**

India¹. Paragraph Nos. 23 to 28 of the said decision reads thus:-

"23. The CA report has mentioned that the sample under reference has tested positive for Ganja. However, for the first time in contrast to the green leafy substance which was found and seized, from each samples were drawn, report of analysis refer to the sample which is in the form of soft greenish heterogeneous mixture flowering and fruiting tops, bits of leaves, stem and stalk alongwith seeds of plant and this was tested positive for Ganja.

24. The NDPS Act defined Ganja under Section 2(iii) (b) as under:

"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 which means that if the seeds and leaves are accompanied by the tops then the same can be termed as ganja."

25. From the reading of aforesaid description, it can be seen that Ganja is flowering or fruiting tops of the cannabis plant and when the flowering or fruiting tops are not accompanied, the seeds and leaves are to be excluded.

26. It is implied that if seeds and leaves are accompanied by tops by way of flowering or fruiting, it would amount to Ganja, but when the seeds and leaves are not accompanied by the tops, this will not be considered as Ganja, ultimately it would have to be ascertained whether the flowering or fruiting tops of the cannabis are accompanied by the seeds and leaves.

27. Now, whether the substance is 'Ganja' will have to be determined on facts of each case. In the present case, if the complaint alleges that the substance which was seized is green leafy substance,

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but there is no reference of the flowering and fruiting of tops and leafy substance indicating that it is a mixture of green leafy substance and it can only amount to Ganja, when it is accompanied with the flowering and fruiting tops.

28. Strangely, the report of analysis refer to the sample which is heterogeneous mixture of flowering and fruiting tops, bits of leaves, stem and stalk alongwith seeds of plant. Necessarily the entire mixture is weighed and found to be 43 Kg. on the basis of which the Applicant is charged for possession and delivering with commercial quantity of Ganja. The discrepancy in what was seized and what was analyzed, prima-facie satisfy me that there are reasonable grounds for believing that the Applicant is not guilty of offences of dealing in commercial quantity and in absence of any antecedent he is not likely to commit any offence on bail."

6. In my humble opinion, the observations made by this Court in **Kunal Dattu Kadu** (supra) squarely apply to the present case. The applicant can be enlarged on bail by imposing some conditions. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Mahesh Gorakh Salunke in connection with C.R. No.3060 of 2017 registered with Sinhagad Police Station shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more local sureties in the like amount.
- (c) The applicant shall attend the Investigating Officer of

Sinhagad police station once a week, every Sunday of the week, between 10.00 a.m. and 12.00 noon.

(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 Pune City till the trial concludes.

(g) The applicant shall attend the trial regularly.

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

7. The application is disposed of.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

(M. S. KARNIK, J.)