



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

BAIL APPLICATION NO. 2469 OF 2023

GANESH PRAKASH GOLESAR

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Ayaz Khan a/w Adv. S.S. Bhandary and Adv. Dilip
Mishra and Adv. Karthik S. Bhandary for the Applicant.
Ms. Veera Shinde, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 07, 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), 20(b)(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act" for short), registered on 30/04/2022 vide C.R. No.90 of 2022 with A.N.C. Azad Maidan Unit, Mumbai.
- 3.** The applicant is accused No.3. There are in all 3 accused. The accused Nos. 1 and 2 were searched and arrested on 30/04/2022. From accused Nos.1 and 2 five Kg

of Ganja each, which is a non-commercial quantity, was found. They are enlarged on bail. While in custody, on the basis of disclosure statements of accused No.1 and 2, a search of the premise of the present applicant i.e. accused No.3 was carried out on 02/05/2023 where the investigating agency found 4 gunny bags which had 61 Kg of contraband Ganja. The applicant was arrested on 02/05/2022.

4. Learned APP opposed the application by filing an affidavit. Learned APP submitted that a huge quantity of commercial quantity i.e. 61 Kg was recovered from the applicant and hence the applicant should not be enlarged on bail.

5. My attention is invited to the order dated 07/09/2023 passed by this Court in **Aabid Mushtak Ansari Vs. The State of Maharashtra**¹. The paragraph Nos. 6 and 7 of the said order read thus:-

"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

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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, Ibrahim Khwaja Miya Sayyed @ Raju vs. The State of Maharashtra and Suresh Maruti Pawar vs. The State of Maharashtra**, the present application deserves to be allowed. The quantity found is commercial quantity. However, considering what has been stated herein above, the same is sufficient to get over the rigours of Section 37 of the NDPS Act."

6. I have perused the panchnama and the Chemical Analysis report which clearly mentioned the description of articles as "Flowering/Fruiting tops, leaves and stalks in a stapled polythene bag, packed in a packet". In view of the observations made in **Aabid Mushtak Ansari** (supra), the applicant can also be enlarged on bail. Though the learned APP submitted that there is one antecedent recorded against the applicant, however, learned counsel for the

applicant states that the applicant has been acquitted. In these circumstances, in my opinion, it is unlikely that the applicant will commit any offence while on bail. The above facts are sufficient, *prima facie*, to get over the rigours of Section 37 of the NDPS Act. The applicant is in custody for more than 17 months. The trial will take a long time to commence and conclude. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Ganesh Prakash Golesar in connection with C.R. No.90 of 2022 registered with A.N.C. Azad Maidan Unit, Mumbai, 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 A.N.C. Azad Maidan Unit, Mumbai, 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 co-operate with the trial Court and shall not seek unnecessary adjournment.

7. The application is disposed of.

(M. S. KARNIK, J.)