



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

BAIL APPLICATION NO.3040 OF 2023

GAYASHOUDIN NIYAJUDDIN SHAIKH	..APPLICANT
VS.	
THE STATE OF MAHARASHTRA	..RESPONDENT

Mr. Akshay Bankapur, for the Applicant.
Ms. Rutuja Ambekar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 11, 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(c) and 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered on 18/06/2020 vide C.R. No. 239 of 2020 with Mumbai Naka Police Station, Nashik.
- 3.** There are in all 2 accused. The applicant is the accused no.2. The applicant was arrested on 18/06/2020. The applicant was in a tempo in which the applicant was found with 40 kg of the ganja. The date of the incident is 18/06/2020 at around 01:10 hours. The contraband ganja is recovered. The applicant is in custody for more

than 3 years. The trial is likely to take a long time to conclude. There are no criminal antecedents reported against them. One of the ground available to the applicant for enlargement on bail in my opinion is long incarceration in the present facts. Further, the panchanama as well as the report of Regional Forensic Science Laboratory will reveal that description of the articles contained in parcel mentions that the same is flowering/fruited tops with greenish coloured leaves, seeds and stalks, put in a packet. The report does indicate the sample is of ganja.

4. NDPS Act defines cannabis as under :

(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 or fruited 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;”

5. Ganja, is the flowering or fruited 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. The chemical analysis report specifically mentions that Exhibit contained

flowering/fruiting tops with greenish coloured leaves, seeds and stalks. The entire contraband as found is weighed for the purpose of determining the contraband as a commercial quantity when what should have been weighed is in terms of the definition. These are prima facie observations coupled with the circumstance that the applicant is in custody pre-trial for 3 years. The above are the circumstances which in my prima facie opinion are sufficient to get over the rigours of section 37 of the NDPS Act. There are no criminal antecedents reported against the applicant. Hence, there is no likelihood of the applicant committing any offence of the similar nature in future while on bail. The investigation is complete. The charge-sheet has been filed. The trial is likely to take a long time to conclude. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Gayashouddin Niyajuddin Shaikh in connection with C.R. No. 239 of 2020 registered with Mumbai Naka Police Station, Nashik shall be released on bail on his furnishing PR. Bond of Rs.50,000/- with one or more local sureties in the like amount.
- (c) The applicant shall attend the investigating officer of Mumbai Naka Police Station, Nashik twice a month on every first and third

Monday of the month between 11.00 a.m. and 1.00 p.m. commencing from November 2023.

(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 area of the Nashi District till the conclusion of trial

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

6. The application is disposed of.

(M. S. KARNIK, J.)