

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO.101 OF 2023

Praveen Supda Chavan and another

Vs.

State of Maharashtra, through its PS, Risod, District Washim

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri Rajendra Bidkar, Advocate for applicants.
Shri I.J. Damle, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : JUNE 23, 2023.

The present application is moved by the applicants under Section 439 of the Code of Criminal Procedure in respect of Crime No.752/2021 registered at Risod Police Station, District Washim under Section 8(c), 29, 20(b)(ii) of the Narcotic Drugs And Psychotropic Substances Act, 1985 (for short, "NDPS Act").

2. The Crime is registered on the basis of report lodged by Police Sub-Inspector Santosh Ramesh Nemnar on an allegation that he received reliable information to the effect that one Eicher truck bearing registration No.MH28BB0867, which is proceeding on Hingoli-Risod road towards Hingoli, is carrying ganja. Accordingly, a trap was arranged and the officer recovered 1150 kg ganja from the said truck. As per the allegation, the present applicants were sitting on the back side of the said truck, on the gunny bags. As they were found on the spot, they were added as

accused and arrested. On the basis of report, accordingly crime was registered.

3. As per the contention of the applicants, they were porters and nothing is recovered from their physical possession. The contraband is alleged to have been recovered is not ganja, as per the definition given in the NDPS Act. It is further contention of the present applicants that there is no material against the present applicants to connect with the alleged offence. Moreover, the investigating officer has not complied with mandatory provisions under the NDPS Act especially under Sections 42 and 52A. There is no compliance as the samples are not brought before the Magistrate. It is further contention of the applicants that there is no evidence as to sanctity of the seal. The *muddemal* was forwarded to Chemical Analyser after 10 days. Thus, considering the mandatory provisions are not followed, the present applicants be released on bail.

4. Heard learned counsel Shri Rajendra Beedkar for the applicants. He submitted that on perusal of the charge-sheet itself it is difficult to establish that the alleged contraband would fall within the definition of ganja as defined under Section 2(b) of the NDPS Act. He further submitted that during the investigation the seizure panchanama was drawn, which does not described the contraband articles properly. The inventory carried out shows that the bundles in each sac contained alleged ganaja,

which are leaves of greenish colour. Thus, the description mentioned in the spot panchanama as well as in the inventory could not fall within the four-corners of ganja. Under such circumstances, the application deserves to be allowed. He further submitted that now investigation is completed. Charge-sheet has already been filed. The trial is not likely to be conclude in the near future. In support of his contention, he placed reliance on various decisions as follows:

Criminal Appeal No.443/2022 with ***Criminal Appeal No.572/2022 (Akshay Lalitrao Dhabale Vs. State of Maharashtra)*** decided on 19.10.2022, wherein it is observed that the Chemical Analyzer has not been examined and it is not clear from the C.A. report whether the greenish, brownish coloured leaves, flowering tops, seeds and stalks were part of a steam or separate. Weight of the flowering tops has not been mentioned anywhere. Thus, there is discrepancy in what was seized and what was analyzed by the C.A. and acquitted the accused. He further placed reliance on ***Abdul Aleem Vs. The Intelligence Officer, Narcotic Control Bureau*** reported in ***2016 0 Supreme (Kar) 770***, wherein the Karnataka High Court observed that after search of vehicle, a white coloured bag containing dried leaves of dark colour found. What has been seized was dried leaves of ganja plant, which is not as per the definition of ganja given under NDPS Act. Therefore, entire prosecution would fail and proceedings were quashed. He further placed

reliance on the decision of this Court in ***Hari Mahadu Valse Vs State of Maharashtra*** in Criminal Application (BA) No.2299/2019 decided on 29.07.2021, ***Kunal Dattu Kadu Vs. Union of India*** in Criminal Application (ABA) No.2173/2022 decided on 29.08.2022, ***Shankar Shivaji Dhale Vs. State of Maharashtra*** in Criminal Application (ABA) No.1820/2021 decided on 12.10.2021, ***Dayaram Gumala Pawara Vs. State of Maharashtra*** in Criminal Application (BA) No.1408/2020 decided on 21.12.2020, ***Kallapa Irappa Biradar Vs. State of Maharashtra*** in Criminal Application (BA) No.509/2021 decided on 20.08.2021, ***Rajaram Kadu Vs. State of Maharashtra*** in Criminal Application (BA) No.2108/2016 decided on 13.06.2017, ***Sandip Ashok Raut Vs. State of Maharashtra*** in Criminal Application (BA) No.2522/2014 decided on 25.03.2015, ***Dhananjay Babaso Shinde Vs. State of Maharashtra*** in Criminal Application (BA) No.1069/2020 decided on 17.11.2021, ***Suresh Maruti Pawar Vs. State of Maharashtra*** in Criminal Application (BA) No.1599/2020 decided on 17.11.2021, ***Tanaji Jagganath Shinde Vs. State of Maharashtra*** in Criminal Application (BA) No.3035/2021 decided on 17.11.2021, ***Laxman Shankar Ghankute Vs. State of Maharashtra*** in Criminal Application (BA) No.2583/2019 decided on 23.06.2021, ***Ravi, Vaijinath and Sharanappa Vs. State of Karnatka*** reported in ***2013 0 Supreme (Karnatka) 53***, ***Nandlal Laddu Beldar Vs. State of Maharashtra*** in Criminal Application (BA) No.1201/2019 decided on 25.07.2019, ***Bhagaban Khillia Vs. State of Odisha*** reported in ***2017 0 Supreme (Ori.) 1359***, ***Gola Billa Nagraj Vs. State***

Chhattisgarh reported in **2003 1 Crimes(HC) 214, Lorik Ram Vs. State of Assam** in Bail Appln./965/2022 decided on 27.05.2022 by the Gauhati High Court. **Smt. Najma Abdul Shaikh Vs. State of Maharashtra** in Criminal Application (BA) No.1311/2012 decided on 23.10.2012, **Bipin Kumar Ramsagar pandit alias Saxena Vs. State of Maharashtra** in Criminal Application (BA) No.1042/2013 decided on 23.09.2013, Suresh Ramsing Beldar Vs. State of Maharashtra in Criminal Application (BA) No.2893/2018, wherein the issue regarding mandatory provisions and the seized article is 'ganja' or not is discussed and the accused are released on bail. He submitted that in view of the various decisions as mandatory provisions are not followed and it is not clear whether the alleged contraband would fall within the definition of 'ganja' or not, the applicants deserve to be released on bail.

5. *Per contra*, learned APP Shri I.J. Damle for State vehemently opposed the submission by contending that the accused were found in possession of huge quantity of ganja of 1150 kg, which was a commercial quantity and having regard to the seriousness of the offence, the application is required to be rejected.

6. Having heard both sides and perused the investigation papers made available on record in the form of charge-sheet and other documents including inventory certificate relied upon by the learned counsel of the applicants as well as learned APP.

7. There is no dispute that commercial quantity in relation to NDPS Act for 'ganja' means any quantity greater than 20 kg. The section 2(iii) (b) and (c) defines 'ganja' as the flowering or fruiting or 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 any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom.

8. Thus the definition of term 'ganja' defines and clarifies that 'ganja' is the flowering or fruiting tops of the cannabis plant excluding the seeds and leaves when not accompanied by the tops. In the case in hand, as seen from the FIR and the investigation papers, the quantity of 1150 kg of ganja was seized from the vehicle. However, certificate of inventory in respect of seized muddemal, as per Section 52A (3) of NDPS Act, shows that gunny bags weighed 1182 kg 150 gram and contain greenish coloured leaves. It appears that when the gunny bag measured with the help of electronic weighing machine produced by the Measurer, there are 56 bags and each containing approximately 6 to 11 bundle in each bag. All the 56 bags are opened with seal then the bundled in it are checked and it was measured alongwith sac and bags. On measurement, the alleged ganja as contained in 56 plastic sacs with the measurement and weight was noted. After weighing the abovesaid ganja, it was seized in the same sacs/bags with seal alongwith the

particulars of crime. Thus, it reveals that the samples were not produced before the Magistrate at the time of inventory.

9. The above state of affairs would make it clear that there is nothing on record to *prima facie* show that before carrying weight of the seized plant of ganja, the investigating officer had separated the flowering or fruiting tops of cannabis plant in order to ascertain the exact quantity of ganja. Infact, there is no mention in the inventory report that the sealed substance includes the flowering or fruiting tops of cannabis plant. This fact becomes further clear from the panchanama also. The seizure panchanama also nowhere shows that the flowering or fruiting tops of cannabis plant were, in any other manner, separated in order to ascertain the correct quantity of ganja. The Chemical Analyzer's report is forthcoming and it shows that the flowering or fruiting tops of cannabis plant. Thus, on perusal of the material on record shows that what was seized was plant and there was no quantification of flowering tops and without separating the flowering or fruiting tops, the ganja was weighed. As the seized material was not weighed after separating flowering tops and therefore it is difficult to ascertain whether quantity can be said to be commercial. Similar observations were made in the orders in *Kallappa Virrapa* and *Hari Mahadu* cases referred supra.

10. In view of Section 37 of the NDPS Act, the power to release an accused on bail subject to the limitation

contained in Section 439 of the Cr.P.C. coupled with the limitation contemplated in view of Section 37 itself, mainly (1) there are reasonable ground for releasing that accused is not guilty of such offence, (2) that he is not likely to commit such offence while on bail. The expression reasonable ground means something more than *prima facie* ground it contemplates substantial probable cost for believing that the accused is not guilty of the offence.

11. It is significant to note that the definition of 'ganja' under NDPS Act takes in its ambit only the flowering or fruiting tops of cannabis plant and excludes the seeds and leaves when not accompanied by the tops. Thus, the definition of 'ganja' is restricted and it does not include the seeds and leave of ganja plant. The panchanama and seizure do not reflect presence of flowering or fruiting tops on the plant. Another aspect of the matter is whether applicants could be said to have been charged for dealing in commercial quantity of the contraband articles. The inventory certificate mentions of the plant of ganja, which is of greenish colour and it nowhere shows that it includes the flowering or fruiting tops. If at all the seeds was to be counted as fruiting part it ought to have been excluded and weighed separately to measure the quantity of ganja.

12. Thus, after perusal of the investigation papers, *prima facie*, the material complied with the charge-sheet, it is difficult to accept that the alleged prohibited substance is

‘ganja’ since it do not come within the definition of ganja under the NDPS Act. Since the only flowering or fruiting tops of cannabis plant are classified as ganja, in absence of the said substance being seized from the applicants, *prima facie* involvement of the applicants is difficult to hold. There is no ground for believing that the applicant is guilty of the offence for the aforesaid recorded reasons. In view of the aforesaid reasons, the applicants are entitled of being released on bail.

13. Needless to say that the observations made are relied on the decision of the present application and trial Court shall not be influenced by the said observations during the course of the trial. Accordingly, I proceed to pass the following order:

ORDER

- i. The application is allowed.
- ii. The applicants-(1) Praveen Supda Chavan and (2) Sandeep Supda Chavan, in connection with Crime No.752/2021 registered with Risod Police Station, District Washim under Section 8(c), 29, 20(b)(ii) of the Narcotic Drugs And Psychotropic Substances Act, 1985, shall be released on bail on they furnishing PR bond of ₹25,000/- each with one surety of like amount.
- iii. The applicants shall report to the concerned Police Station once in a month on first Saturday between 11.00 a.m. to 1.00 p.m.

iv. The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the present case.

v. The applicants shall furnish their cellphone numbers address with the address proof. Additionally, they shall furnish the names of their two relatives and their address with the address proof.

With this, the application is disposed of.

JUDGE

Wagh