

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 172/2023

Anandrao Govardhan Jadhav .vs. State of Maharashtra

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

Court's or Judge's orders

Mr. S. Sheikh, Advocate for applicant.

Mr. S. S. Doifode, A.P.P. for non applicant-State.

CORAM : ANIL L. PANSARE, J.

DATE : APRIL 20, 2023.

This is an application under Section 439 of the Code of Criminal, 1973. The applicant has been arrested on 16.10.2023 in Crime No.285/2022, registered with Police Station, Bitargaon, District Yavatmal for the offences punishable under Section 20 of the Narcotics Drugs and Psychotropic Substances Act, 1985.

2. Briefly stated, the case of the prosecution is that on the basis of secret information, the informant police officer and his team along with panchas conducted raid in the field of the applicant. The investigating agency found 147 Kg. Ganja. The investigating agency obtained Chemical Analyzer's report. The result of the analysis is that the material seized is Ganja.

3. Learned counsel for applicant has invited my attention to seizure panchanama dated 15.10.2022. What has been seized is green wet leaves with roots and stalks. The green wet leaves were separated. Its weight was found to be 84 Kg. Sample-S1 weighing 300 gm. was taken out from these green leaves. Roots and stems were also separated. According to the learned counsel for the applicant, the plants were not having flower or fruit tops.

He then invited my attention to Section 2(iii)(b) of the NDSP Act. Section 2(iii)(b) defines Ganja to mean, the flowering 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.

4. In the present case, it appears that the plants that were seized did not have flower or fruiting tops.

5. Learned counsel for applicant has then invited my attention to the Forensic Science Laboratory's report. The sample that was sent to the FSL included greenish-brownish coloured leaves, flowering tops, seeds and stalks (wet). Thus, the sample that was sent to the FSL consisted flowering tops as well. As against, the seizure panchanama indicates that the plants were not having flowering or fruiting tops.

6. Learned counsel has then referred to the judgment of this Court (Coram: Mrs. Mridula Bhatkar, J.) dated 25.03.2015 in Bail Application No.2522/2014 (Sandip Ashok Raut Vs. The State of Maharashtra). This Court, in somewhat similar facts, has observed in paragraph 5 thus:

“5.

The C.A. report shows that greenish flowering tops pieces and other material were sent to the C.A. and the report is positive. However, as it is rightly pointed by the learned Counsel for the applicant/accused that in the description of the seizure panchanama, nowhere the police have mentioned that the material found was with flowering or fruiting tops alongwith the seeds, leaves and stalks. It is to be noted that in the definition, the Legislature has specifically excluded seeds and leaves and specifically

mentioned that cannabis means fruiting or flowering tops. There may be seeds and other portion of that shrub alongwith the flowering or fruiting tops but the flowering and fruiting top is a necessary ingredient of definition of ganja, i.e., cannabis under the Act.”

7. The Court, thereafter, granted bail to the applicant therein. The learned A.P.P. has opposed the application on the ground that the FSL report shows that the article seized was Ganja, benefit of the aforesaid discrepancy cannot be extended to the applicant at this stage and that the said discrepancy is the subject matter of trial where appropriate explanation may be given by the investigating officer. This contention seems contrary to the findings recorded by this Court in the decision cited above. In the similarly placed matter, this Court has extended the benefit to the accused. There appears no reason why the same approach should not be adopted in the present case. The discrepancy is pretty obvious, in the sense, in seizure panchanama there is no whisper of flowering or fruiting tops having been seized. As against, the sample that was sent to the FSL indicates that there were flowering tops.

8. With the above discrepancy and the ruling of this Court in the case of Sandip Ashok Raut Vs. State of Maharashtra (supra), when prima facie the material seized does not fit in the description of ‘Ganja’, there are reasonable grounds for believing that the applicant is not guilty of the offence.

9. Further, learned counsel for applicant has pointed out that the investigating officer has, in forwarding letter dated 19.10.2022 issued in favour of Deputy Director of FSL, referred

to the sample Exh.-S1, to mean a parcel of 300 gm. of cannabis (Ganja) having wet leaves. The words, “flowering or fruiting tops” is conspicuously absent. Thus, the discrepancy is further cemented and therefore benefit ought to be given to the applicant.

10. When inquired of antecedents, learned counsel for the applicant submits that there are no criminal antecedents. The applicant, therefore, is not likely to commit offence if released on bail. The applicant is residing at the given address since long. The applicant owns agricultural land. Thus, he has strong roots in the society. The charge-sheet has been filed. The charge is not yet framed. It will take time to commence and conclude the trial.

11. Considering the peculiar facts of the case and the nature of evidence against the applicant so also the presumption that the person accused of a crime is considered to be innocent until proven guilty, I am of the considered view that no fruitful purpose will be served by keeping the applicant in jail. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

12. The observations made in this order are prima facie in nature and are made for deciding the present application only. The trial Court shall not get influenced by the observations made in this order.

13. Resultantly, following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Applicant – Anandrao Govardhan Jadhav be released on bail in Crime No.285/2022, registered with Police Station, Bitargaon, District Yavatmal for the offences punishable under Section 20 of the Narcotics Drugs and Psychotropic Substances Act, 1985, on he executing PR. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.
- (iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the same till the final disposal of the case.
- (iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.
- (v) The applicant shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offence. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.
- (vi) The applicant shall maintain law and order.
- (vii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

(Anil L. Pansare, J.)