

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

Criminal Bail Application (BA) No. 365 of 2023

Rahul S/o Gotiram Sable

Versus

The State of Maharashtra, through DGP Washim Police Station Officer
Risod, PS Investigated by LOB Washim

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.V.Sirpurkar, Advocate for the applicant.
Shri H.D.Dubey, AGP for the non-applicant/State.

**CORAM : ANIL S. KILOR, J.
DATED : 21st JULY, 2023.**

In the present application, the applicant is seeking bail under Section 439 of Code of Criminal Procedure in Crime No. 752 of 2021 registered with Risod Police Station for the offence punishable under Sections 8(c), 20(b)(II), 29 of Narcotic Drugs and Psychotropic Substances Act, 1985.

2. This is a successive application after rejection of first bail application on 20th July, 2022.

3. Change in circumstances is that the main accused Praveen Supda Chavan has been released by

this Court on bail vide order dated 23rd June, 2023 by recording the observations as follows:

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."

4. If the allegations against the accused Praveen are compared with the present applicant, the case of the present applicant is on a better footing, as nothing has been recovered from the applicant but the only allegation against the applicant is that he paid the

amount of Rs.5,50,000/- to his father who is one of the accused in the present matter.

5. In the circumstances, I am of the opinion that the applicant is entitled for grant of bail on parity. Accordingly, I pass the following order.

- i. Criminal application is allowed;
- ii. It is directed that the applicant in Crime No. 752 of 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 his furnishing PR Bond of Rs.25,000 with one surety of like amount;
- iii. The applicant shall report to the concerned Police Station once in a month on first Saturday between 11.00 am to 1.00 pm;
- iv. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the present case;
- v. The applicant shall furnish his cellphone numbers, address with the address proof. Additionally, he shall furnish the names of his two relatives and their address with the address proof.

[ANIL S. KILOR, J.]