

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

CRIMINAL APPLICATION (BA) NO.1260/2022
Shri Prakash s/o Sukhdeo Saundale

..VS..

State of Mah., thr.its PSO PS Patur, District Akola

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

Court's or Judge's Order

.....
Shri S.G.Joshi, Counsel for the Applicant.
Shri M.J.Khan, Additional Public Prosecutor for the NA/State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 07/07/2023

PRONOUNCED ON : 20/07/2023

1. By this application, being moved under Section 439 of the Code of Criminal Procedure, bail is sought in Connection with Crime No.160/2022 registered with the non-applicant for an offence punishable under Section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (**the NDPS Act**).

2. On 1.5.2022, the applicant is arrested and since then he is behind the bars.

3. Police Inspector V.R.Patil of Patur Police Station, district Akola, received an information that the applicant, working as Watchman at Dr.Vandanatai Jagannath Dhone Ayurvedic College, Patur, has cultivated plants of 'Ganja' in a garden of the said Ayurvedic College. Accordingly, a raid was conducted. After a search of the garden, it is found that the

applicant has sowed plants of 'Ganja' and all the plants were uprooted and weighed at weighing machine and the same was found to be 38.800 kilograms.

On the basis of the said accusations, Police Inspector V.R.Patil has lodged report and the crime is registered against the applicant.

4. Heard learned counsel Shri S.G.Joshi for the applicant and learned Additional Public Prosecutor Shri M.J.Khan for the State.

5. Learned counsel Shri S.V.Sirpurkar for the applicant submitted that the applicant is falsely implicated in the crime. The alleged seized material is not 'Ganja' in view of the definition of 'Ganja' under the NDPS Act. The mandatory provisions are not complied with. According to him, the quantity shown to be commercial quantity does not amount to commercial quantity as the applicant has planted it for his personal consumption. The investigating agency has not weighed it by separating the flowering and fruiting tops. The investigating agency has also not complied with the mandatory provisions. Now, the investigation is completed and chargesheet is filed. Since the date of arrest he is in jail.

In support of his contentions, he placed reliance on the order of this court in the case of Criminal Application No.1296/2022 (Ibrahim Khwaja Miya Sayyed @ Raju vs. State of Mah) decided at the Principal Bench on 17.3.2023.

Lastly, he prays that as the alleged seized material is not 'Ganja', in view of the definition of 'Ganja' under the NDPS Act, further custody of the applicant is not required and, therefore, he be released on bail.

6. Learned Additional Public Prosecutor Shri M.J.Khan for the State, submitted that the entire plants were uprooted consisting of leaves, flowers, and bubs and the same are sufficient to show that cannabis are seized from the applicant. There is no ground to believe that the applicant has not committed the offence. He submitted that seizure of the said plants shows 142 live trees having leaves, flowers, and buds. Seizure panchanama as well as the First Information Report sufficiently shows that the trees were of 'Ganja'. The said seized articles were sent to the Chemical Analyzer and its report is awaited. There is a *prima facie* material against the applicant and, therefore, the application deserves to be rejected.

7. Having heard both the sides and perused the

investigation papers made available on record in the form of chargesheet and other documents including the inventory certificate relied upon by the learned counsel for the applicant as well as learned Additional Public Prosecutor for the State, there is no dispute that commercial quantity, in relation to the NDPS Act for 'Ganja', means any quantity greater than 20 kilograms.

8. Definitions under Section 2(iii)(b) and 2(iii)(b)(c) specify 'Ganja' as 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, and any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom.

9. Thus, the definitions of term 'ganja' clarify 'ganja' is the flowering or fruiting tops of the cannabis plants excluding the seeds and leaves when not accompanied by the tops.

10. In the case in hand, the investigation officer has uprooted 142 'Ganja' plants weighing 38.800 kilograms from the premises of the garden situated at Dr.Vandanatai Jagannath Dhone Ayurvedic College, Patur. It appears that the entire trees were weighed to be 38.800 kilograms. The inventory certificate also shows that the uprooted 'Ganja' trees, green colour leaves,

and branches were weighed to be 23.240 kilograms. Accordingly, inventory certificate was issued.

11. The above state of affairs would make it clear that there is nothing on record *prima facie* to show that before carrying the weight of the seized plants of 'ganja', the Investigating Officer has separated the flowering and fruiting tops of cannabis plants in order to ascertain the exact quantity of 'Ganja'. In fact, neither in the First Information Report; inventory report, nor in the seizure panchanama it is mentioned that the flowering and fruiting tops of cannabis plants were separated in order to ascertain the correct quantity of 'Ganja'.

12. Thus, perusal of material shows that what seized were leaves and there was no quantification of flowering tops and without separating the flowering of fruiting tops, the 'Ganja' was weighed. As the seized material was not weighed, after separating the flowering tops, it is difficult to ascertain whether the quantity said to be commercial.

The similar observations were made in the orders of this court in the cases of:

Kallapa Irappa Biradar vs. State of Maharashtra in Criminal Application (BA) No.509/2021 decided on 20.8.2021, and

Hari Mahadu Valse vs. State of Maharashtra in Criminal Application (BA) No.2299/2019 decided on 29.7.2021.

13. In view of Section 37 of the NDPS Act, powers to release an accused on bail subject to the limitation contained in Section 439 of the Code of Criminal Procedure coupled with the limitation contemplated in view of Section 37 of the NDPS Act are itself mainly on, (1) there are reasonable grounds for releasing accused that he is not guilty of such offence and (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 cause for believing that accused is not guilty of the offence.

14. It is significant to note that the definition of 'Ganja' under the NDPS Act, in its ambit, is only the flowering or fruiting tops of cannabis plants and excludes the seeds and leaves when not accompanied by the tops. Thus, definition of 'Ganja' is restricted and it does not include the seeds and leaves of 'Ganja' plants.

15. The inventory report does not reflect the presence of flowering or fruiting tops on the plants.

16. Another aspect of the matter is, whether the

applicant could be said to have been charged for dealing in commercial quantity of the contraband articles.

17. The inventory certificate mentions of the plants of 'Ganja' which are leaves of greenish colour and it nowhere discloses that it includes flowering or fruiting tops. If all the seeds were to be counted as a fruiting part, it ought to have been excluded and weighed separately to measure the quantity of 'Ganja'.

18. As per the First Information Report, weight of seized articles was 38.800 kilograms. Whereas, as per the inventory report, weight of the same was 23.820 kilograms. Thus, there is a discrimination in the weight also.

19. Thus, perusal of the investigation papers and the material complied with the chargesheet, *prima facie*, reveals that it is difficult to say that the alleged prohibited substance is 'Ganja' since it does not come within the definition of 'Ganja' under the NDPS Act.

20. Since the only flowering or fruiting tops of cannabis plants are classified as 'Ganja', in absence of the said substance, being seized from the applicant, *prima facie*, there is no ground for believing that the applicant is involved and is

guilty of the offence for aforesaid recorded reasons.

21. In the result, the application can be allowed, however imposing certain conditions upon the applicant, as per order below:

ORDER

(1) The criminal application is **allowed**.

(2) Applicant Shri Prakash s/o Sukhdeo Saundale, in Connection with Crime No.160/2022 registered with the non-applicant for an offence punishable under Section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985, be released on bail on his executing a P.R.Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.

(3) The applicant shall attend the concerned police station once a month on first Saturday of such month between 11:00 am and 1:00 pm.

(4) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

(5) The applicant shall furnish his cell phone number(s) and address with the address proof. Additionally, he shall furnish

names of his two relatives and their addresses with proofs.

(6) Needless to mention that the observations made in this order are purely *prima facie* for deciding the present application for grant of bail only and learned Judge before whom the trial will be conducted shall not get influenced by the said observations.

With this, the criminal application stands disposed of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!