



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.47 OF 2024**

1. Shaikh Rahim S/o Shaikh Miramoddin,
Age: 60 years, Occu: Driver,
R/o. Indalwai Mandal Indalwai,
Tq and Dist. Nizambad.
2. Shaikh Karim S/o Shaikh Khadarpasha,
Age: 33 years, Occ: Labor,
R/o. Nasim Colony Ekaminar Masjid,
Tq and Dist. Nizambad. ..Applicants

Versus

The State of Maharashtra,
Through Bhokar Police Station, Dist. Nanded. ..Respondent

...

Mrs. Aishwarya C. Deshpande h/f Mr. C. C. Deshpande, Advocate
for the Applicants.

Mr. P. S. Patil, Addl. PP for Respondents-State.

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED FOR ORDER ON: 19th JANUARY, 2024

PRONOUNCED ORDER ON : 23rd JANUARY, 2024.

ORDER:-

1. The applicants seek regular bail in connection with Crime No.308/2023 registered with Bhokar Police Station, Dist. Nanded for the offences punishable under Sections 8(C) and 20(B) (II) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'N.D.P.S., Act, 1985').

2. The investigation was set in motion on the basis of information given by Nanasaheb Dnyandev Ubale, Police Inspector, Bhokar Police Station. In nutshell it is alleged that on 25.08.2023 a secrete information was received that Ashok Leyland vehicle bearing Registration No.TS-36-T-4202 was carrying contraband/ganja. Accordingly, steps were taken to conduct raid.

The vehicle was apprehended. On enquiry, driver introduced himself as Shaikh Rahim s/o Shaikh Miramoddin and his companion introduced himself as Shaikh Karim s/o Shaikh Khadarpasha. When search of the vehicle was taken, white colour gunny bag was found containing 24 packets of leafs, buds, seeds like ganja. It was weighing about 52.500 kg. The vehicle alongwith contraband was seized. The occupants of the vehicle/accused persons were arrested. The investigation progressed. The charge-sheet came to be filed. The applicants moved for grant of regular bail before the Sessions Court, however, their prayer came to be rejected vide order dated 19.12.2023.

3. Mrs. Deshpande, learned Advocate appearing for the applicants would submit that the applicants are employees on the vehicle. They were not in conscious possession of the contraband. They have been falsely implicated in the aforesaid crime. She would submit that the quantity of the seized material was 52 kg. However, it was the mixture of the raw cannabis plants including toppings, plants, flowering, fruiting tops etc. She would submit that in view of the definition of ganja as per Section 2(b)(c) of the N.D.P.S. Act, 1985, the flowering or fruiting tops of the cannabis plants (excluding the seeds and leaves when not accompanied by the tops) can be termed as ganja. She would further submit that there are no criminal antecedents reported against the applicants. The applicants are behind the bar for more than five months. The investigation in the matter is complete and further detention of the applicants would not be necessary. In support of her contentions she relies upon the orders passed by this Court in case of ***Shaikh Mohammad Shaikh Amir Vs. The State of Maharashtra*** (Bail Application No.1 of 2020 dated 11.02.2020), ***Dagdiram S/o Devrao Mundhe Vs. The State of***

Maharashtra (Bail Application No.637 of 2021) with another connected Bail Application dated 20.08.2021, ***Ibrahim Khwaja Miya Sayyed @ Raju Vs. The State of Maharashtra*** (Bail Application No.1296 of 2022 dated 17.03.2023), ***Santosh Pandurang Parte Vs. Amar Bahadur Maurya and Anr.*** (Bail Application No.4125/2021 dated 19.07.2023) and ***Subhash Baburao Patil Vs. The State of Maharashtra*** (Bail Application No.1363/2023 dated 24.08.2023).

4. The learned Addl. P.P., however, strongly opposes the prayer contending that the quantity of ganja found in possession of the applicants is more than 20 kg, as such, it constitute commercial quantity. The bar under Section 37 of the N.D.P.S. Act, 1985 would attract in such cases. He would further point out that the applicants are resident of State of Andhra Pradesh. If they are released on bail, the possibility of absconding cannot be ruled out. However, he fairly concedes that no criminal antecedents have been reported against the applicants.

5. Having considered submissions advanced, it can be gathered that the investigation in the matter is completed and charge-sheet is filed. The inventory certificate issued by the Judicial Magistrate First Class, Umri dated 29.08.2023 is part of charge-sheet, which indicates that what was seized was greenish brown leaves, which were dried. The contents of the FIR shows that the seized material was containing the mixture of the leaves, buds, fruiting, seeds etc. The total weight of the seized article was 52.500 kg.

6. If the definition of ganja is considered, it can be observed that the seized articles are not comparable with the ganja as defined under Section 2(b)(c) of the N.D.P.S. Act, 1985.

The definition stipulates flowering or fruiting tops of cannabis plants (excluding the seeds and leaves when not accompanied by the tops) as ganja. The contents of the FIR itself shows that the material seized was including the seeds, leaves and other parts of the plants. In absence of segregation of the contraband, it would be difficult to hold that the entire seized muddemal passes definition of the ganja in terms of the provisions of N.D.P.S. Act, 1985. It is difficult to hold that seized articles constitutes commercial quantity of contraband i.e. Ganja as defined. Therefore, Section 37 of the N.D.P.S. Act, 1985 would not attract in the facts of this case.

7. The careful reading of the contents of the FIR indicates that the vehicle carrying gunny bag containing corn and other articles was apprehended by the police and the applicants were found in the cabin. One of them was driver and other was his companion. The personal search was not taken. The goods were laying in the rear side of the vehicle. The investigation in the matter is complete. The charge-sheet is filed. The applicants are behind the bar for more than five months. The trial would take its own course. No criminal antecedents are reported to discredit the applicants. In that view of the matter, no purpose would be served by continuing the detention of the applicants. As such, case is made out for grant of bail, however, subject to stringent conditions. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicants, Shaikh Rahim S/o Shaikh Miramoddin and Shaikh Karim S/o Shaikh Khadarpasha be released on bail in Crime No.308/2023 registered with Bhokar Police Station, Dist. Nanded for the offences punishable under Sections 8(C) and 20(B)

(II) of the Narcotic Drugs and Psychotropic Substances Act, 1985 on furnishing P.B. and S.B. of Rs.1,00,000/- (Rs.One Lakh only) each alongwith local surety for the like amount on following condition:

- a. The applicants shall not tamper with the prosecution evidence in any manner.
- b. The applicants shall furnish their address proofs, Aadhar cards and particulars of the local police station having jurisdiction over their place of residence.
- c. The applicants shall attend each and every effective date of hearing before the Trial Court.

(iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE