



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

961 BAIL APPLICATION NO. 356 OF 2024

SHUBHAM @ BABLU ASARAM BAHURE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Satyajit S. Bora.
APP for Respondent/State : Mr. Mukesh K. Goyanka.
...

CORAM : **SANJAY A. DESHMUKH, J.**

DATE : 10th May, 2024.

P.C.:

1 Heard.

2 This is an application, under Section 439 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C."), for grant of regular bail in connection with Crime No.288 of 2023, registered with State Excise Police Station, State Excise Department, District Aurangabad, for the offences punishable under Sections 20(a), (b), (i), (ii) and (c) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act").

3 It is averred in the report by the Flying Squad of Excise Department that it received secret information on 28th September, 2023 that applicant has planted Ganja plants in his father's agricultural land bearing Block No.418 situated at village Bodhegaon (Bk.). Accordingly, *Panchas* were called. Procedure was followed and in the

presence of State Excise Department, the raid was effected. 144.58 kg cannabis trees including roots, branches and flowering top etc. were seized. Accordingly, the report was lodged against the applicant.

4 The learned counsel for applicant submitted that the applicant has not planted those cannabis trees. It is agricultural land owned by his father. The applicant is not arrested from the spot. In violation of Section 37 and 52-A of the NDPS Act, these cannabis trees are seized. The learned counsel for applicant further submitted that since 5th October, 2023, the applicant is in jail. Investigation is completed. All the witnesses are public servants. It is lastly prayed to allow the application.

5 The learned counsel for applicant is relying upon the following authorities:

1) ***Dhansingh Gundiram Gumladu and another Vs. State of Maharashtra***, Bail Application No. 241 of 2024, decided on 15.02.2024. While releasing the accused on bail this Court observed that, where the alleged cannabis plants sent to Chemical Analyzer without quantifying the weight of the flowering top, the prosecution case falls under shadow of doubt. Hence, Section 37 of NDPS Act is not applied. Further in the said case the flowering tops were not separated, therefore, it is difficult to accept that, the quantity of ganja was commercial.

II) In **Jayaji Gnyanoba Palve Vs. The State of Maharashtra**, Bail Application No.942 of 2023, decided on 17.01.2023, this Court observed that, since the police did not segregate the soil attached to the roots, flowering tops, therefore, it would be uncertain that, the quantity allegedly seized is the commercial quantity. Therefore, Section 37 of the NDPS Act would not attract.

III) **Imtiyaz Sattar Shaikh Vs. The State of Maharashtra**, Bail Application No.291 of 2023 decided on 01.11.2023. In this case, this Court considering the fact that, the accused was in jail for 17 months and investigation is completed, released the accused on bail.

IV) **Popat Govardhan Nagode Vs. The State of Maharashtra, 2023 Latest CaseLaw 61 Bom.** In this case, this Court observed that, there is doubt about commercial quantity of ganja. Therefore, this Court released the accused on bail.

V) **Mohd Muslim @ Husain Vs. State (NCT of Delhi)**, reported in Criminal Appeal No.943 of 2023 decided on 28th March, 2023. The Honourable Supreme Court observed that, grant of bail on ground of undue delay in trial cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436-A which is applicable to offences under the N.D.PS. Act.”

6 The learned APP for the State strongly opposed the application and submitted that the applicant is involved in the serious crime. Huge quantity of cannabis plants of 144.58 kg including greenish Ganja flowering tops and roots, are legally seized. The applicant is not altogether stranger to the said agricultural land. All the case laws cited by the applicant are not applicable. It is lastly prayed to reject the application.

7 The learned APP for the State is relying upon the authority in the case of ***Ajay Vitthal Shriram Vs. The State of Maharashtra*** (Bail Application No.1725 of 2021) dated 16th March, 2022, in which this Court in paragraph 10 held as under:-

“10. This decision of this Court has no application because in this case cannabis plant were found to have been grown in the field. Cannabis plant were seized which in aggregate weighed 42.6 kg. In the case at hand, the plants were weighed along with tops. Same principle has been laid down in other authorities.”

8 The learned APP for the State submitted that seeds and leaves are to be included and not excluded, which are accompanied by flowing tops or fruiting tops. The learned A.P.P. is relying upon the authority of the Hon'ble Supreme Court in the case of ***State by the Inspector of Police vs. B. Ramu*** criminal appeal arising of S.L.P. (Cri.) No. 8137 of 2022. Para 11 of the same reads as under:-

“11. In case of recovery of such a huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused what to talk of anticipatory bail more so when the accused is alleged to be having criminal antecedents.”

It is thus observed that the court in case of recovery of narcotic substance should be slow in granting bail. It is lastly prayed to reject the application.

9 Perused the charge-sheet, particularly, the report and seizure Panchanama of cannabis. The applicant was found while growing cannabis trees in his agricultural land.

10 The said substance shows that seeds and leaves are accompanied by fruiting tops. Thus, there is *prima-facie* serious case against this applicant in terms of Section 37 of the NDPS Act. The applicant failed to establish that there are reasonable grounds for believing that applicant has not committed the said offence. Considering the peculiar set of facts, the case laws cited by the learned counsel for applicant are not helpful to this case. The application, therefore, deserves to be rejected. The application is rejected.

[SANJAY A. DESHMUKH, J.]