

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 695 OF 2024

Yogesh Gautam Wagh

VERSUS

The State Of Maharashtra

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Advocate for Applicant : Mr. Ladda Somnath G.

APP for Respondent/State : Mr. S.B. Narwade

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CORAM : S.G. MEHARE, J.

DATED : JUNE 24, 2024

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State.
2. The applicant seeks bail in Crime No.287 of 2023 registered with State Excise Department, District Aurangabad for the offence punishable under Sections 20(a)(b)(i)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short).
3. Learned counsel for the applicant has raised many objections since from the authorization of the raiding officer to the fault of the officer not ascertaining the share of land where the cannabis plants were planted. He argued that the raiding party did not show that the applicant was the exclusive owner of the area of the land where the cannabis plants were planted. He submits that he was barely present there. Raiding party asked him, what he has planted.

He denied and then the raid was conducted. He mainly argued that Sections 52, 53 and 42(2) of the NDPS Act have not been complied with. The flowering and fruiting tops were not segregated. The plants were weighed with stems, leaves and even soil. The weight of the seized muddemal was reduced to 65 kg from 114 kg. He also argued that the mandatory provisions of law as mentioned above have not been followed. He would submit that there is serious doubt about the involvement of the applicant in the crime.

4. Learned APP has pointed out that the person who had led the raid was authorized by Government Notification dated 14.11.1995. He would submit that the entire mandatory provisions of law have been complied with. The chemical analysis report supports the prosecution that the seized muddemal was the 'Ganja' as defined under the NDPS Act. The flowering tops were tested as 'Ganja'. He would submit that the offence is serious. Huge quantity of Gana has been seized. Therefore, the application deserves to be dismissed.

5. On similar fact, this Court at Principal Seat in the case of **Ibrahim Khwaja Miya Sayyed @ Raju Vs. The State of Maharashtra in Bail Application No.1296 of 2022 dated 17.03.2023** has discussed various case laws on similarly situated facts. The term 'Ganja' has been defined in Section 2 (iii)(b) of the NDPS Act which means the flowering or fruiting tops of the Cannabis Plant (excluding the seeds and leaves when not accompanied by the tops), by whatsoever name

they may be known or designated. In the said case, it has been observed that a plain reading of this section would reveal seeds and leaves would not be covered under the definition of 'Ganja' unless they are accompanied by the flowering or fruiting tops of the Cannabis plant. This has been the consistent interpretation of this Court in **Rahul Bhimrao Pawar Vs. The State of Maharashtra (Bail Application No.2977 of 2021)**, **Kunal Dattu Kadu Vs. Union of India (Anticipatory Bail Application No.2173 of 2022)**, **Hari Mahadu Walse Vs. The State of Maharashtra (Bail Application No.2299 of 2019)** and **Amit Shankar Devmare Vs. The State of Maharashtra (Bail Application No.4203 of 2021)**.

6. The prosecution has a case that the quantity of 'Ganja' was a commercial. It is not disputed that the weight of the so-called seized cannabis plants from the field was reduced to high extent when the inventory was done before the Magistrate. The prosecution has no case that the flowering and fruiting tops were segregated from the leaves, seeds, stalks and stems. The so-called weight of the contraband includes the weight of leaves, seeds and stalks. Quantifying the weight together without separately weighing the flowering or fruiting tops raises a doubt whether 'Ganja' seized from the applicant was commercial quantity so as to attract the provisions of Section 20(C) of the NDPS Act. Considering the consistent view about the commercial quantity of 'Ganja' weighed without segregating

leaves, seeds and stalks, in such cases Section 37 of the NDPS Act would not come into play. There is serious doubt about the commercial quantity of 'Ganja'. On the above facts, the accused have been granted bail. This Court has no reason to take a different view as the facts of the judgments relied upon (supra) and this case are identical. That apart, the chemical analysis report also supports the contention of the applicant that the flowering and fruiting tops were not segregated. The investigation has been completed. Since there is no bar under Section 37 of the NDPS Act, it would be inappropriate to keep the applicant behind bar. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant, Yogesh Gautam Wagh, be released on bail on furnishing PB. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount in the above crime, on the conditions that;
 - (a) The applicant shall not tamper with the prosecution witnesses.
 - (b) The applicant shall not involve in similar crime in future.
 - (c) The applicant shall attend the trial on each and every date.

(5)

- (d) The applicant shall furnish his current address and cell phone number with an undertaking that he would not change his address and cell phone number till the conclusion of trial.

(S.G. MEHARE, J.)