



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

BAIL APPLICATION NO.728 OF 2024

Laxman Nivrutti Borade,
Age-56 years, Occupation-Agri.,
R/o-Borade Galli, Mantha,
Tq-Mantha, Dist-Jalna.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Officer In-charge Police
Station Ashti, Tq-Partur,
Dist-Jalna,
- 2) The Superintendent of Police,
Jalna, Dist-Jalna.

...RESPONDENTS

...
Mr. S.J. Salunke Advocate for Applicant.
Mr. S.D. Ghayal, A.P.P. for Respondent Nos. 1 and 2.
...

CORAM: S.G. MEHARE, J.

DATE : 13th JUNE, 2024

ORDER :

1. Heard learned counsel for the applicant and learned APP for the respondents.
2. The applicant seeks bail in Crime No.302 of 2023

registered with police station Ashti, Taluka-Partur, District-Jalna for the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act (for short "the N.D.P.S. Act").

3. Learned counsel for the applicant submits that the raid was taken in the field of the applicant. The investigating officer uprooted the Ganja plants. The total weight of the cannabis plants was 369.50 k.g. As per the definition of the term "Ganja" under Section 2(b) and (c) of the N.D.P.S. Act, "Ganja" is the 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, or any of the above forms of cannabis or any drink prepared there from. Weighing the entire plants with soil does not fall under the definition of Ganja. Roots, stems, branches and leaves of the plants cannot be termed as Ganja. He would submit that entire plants were sent to chemical analyzer. Flowering or fruiting tops of the cannabis were not segregated from the plants. In such circumstances, the rigor of Section 37 of the N.D.P.S. Act would not come in the way. Further, he would submit that the applicant

is having no antecedents to his discredit and he has roots in the village and therefore, the applicant deserves the bail.

4. Per contra, the learned APP has strongly opposed the application and submits that the applicant had sown huge quantity of the Ganja plants which is itself an offence. Before weighing the quantity, the soil, stem, branches, leaves etc. were separated and the sample has been drawn in accordance with law. Considering the quantity of Ganja plants, it is a commercial quantity. Hence rigor of Section 37 of the N.D.P.S. Act will come in the way of the applicant to seek bail.

5. It is not in dispute that flowering or fruiting tops of the cannabis were not segregated from the plants. Entire plants with soil were weighed. Considering the definition of term "Ganja", it is clear that it includes only flowering and fruiting tops of the cannabis plants. The investigation does not specify that before weighing the plants, the flowering and fruiting tops of the cannabis plants were separated. The record shows that the plants were containing leaves and other contents. Inventory certificate also does not show that flowering and fruiting tops were segregated.

6. There are catena of Judgments of this Court taking the view that weighing the cannabis plants without segregating the flowering or fruiting tops raises a doubt about the commercial quantity of Ganja. This Court in the Case of ***Ibrahim Khwaja Miya Sayyed @ Raju vs. the State of Maharashtra at Principal Seat at Bombay in Bail Application No.1296 of 2022, dated 17th March 2023*** observed that 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.

7. Considering the consistent view of the High Court in aforesaid case, this Court is of the view that a plain reading of section 2(iii)(b) of the N.D.P.S. Act would reveal that 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 Kadu vs. Union of India (ABA No.2173 of 2022)***, ***Hari Mahadu Walse vs.s the State of Maharashtra (Bail Application No.2299 of 2019)*** and

Amit Shankar Devmare vs.s the State of Maharashtra (Bail Application No.4203 of 2021).

8. Thus, it has been the consistent view of this Court that for determining the quantity of the commercial Ganja only flowering or fruiting tops of the cannabis plants should have been considered. If it is not separated, then there is a serious doubt about the quantity.

9. Thus, in this case, there is dispute about the quantity of the contraband. As discussed above the prosecution has not produced any material to show that it was the commercial quantity. In absence of such material, there shall be no rigor of Section 37 of the N.D.P.S. Act. The applicant is having no antecedents to his discredit and he has permanent roots in the village and therefore, he deserves bail. Hence, the following order:-

ORDER

(I) Bail Application is allowed.

(II) Applicant – Laxman Nivrutti Borade be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount, in above crime, on the condition that:-

(a) The applicant shall attend the trial on each and every effective date.

(b) The applicant shall not involve in a similar crime.

(c) The applicant shall not tamper with the prosecution witnesses.

[S.G. MEHARE , J.]

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