

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 763 OF 2024

Sadique Farook Shaikh
Age : 28 years, Occu : Business
R/o : New Bazar, Shevgaon,
Tq. : Shevgaon, Dist. Ahmednagar ...Applicant

Versus

The State of Maharashtra
Shevgaon Police Station,
Through Police Inspector ...Respondent

...
Advocate for Applicant : Mr. Sharad V. Natu
APP for Respondent/State : Ms. P.J. Bharad

...

CORAM : S.G. MEHARE, J.

RESERVED ON : JUNE 12, 2024

PRONOUNCED ON : JUNE 14, 2024

ORDER :-

1. The applicant seeks bail in Crime No. 257 of 2024 registered with Shevgaon Police Station, District Ahmednagar for the offences punishable under Sections 20(b)(ii) and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short).
2. The Local Crime Branch, Ahmednagar had received a secret information that the applicant possesses and sells the narcotic drugs. Therefore, he formed a team to raid the house of the applicant. The police with a raiding party entered the house of the applicant by following the due procedure. In a raid, they find

applicant present in the house. Thereafter, they searched the house and find one gunny bag containing the fruits, flowering, stems with leaves. As per the prosecution case, it was a contraband. On weighing, it was 3 kilo 980 grams of Ganja. The gunny bag was tied with thread and label was affixed on it. On the very same day, the applicant was arrested.

3. Learned counsel for the applicant would submit that in view of the definition of Ganja in NDPS Act, the alleged contraband seized is not a commercial quantity. The police did not segregated the flowering and fruiting tops. Therefore, the rigour of Section 37 of NDPS Act would not assist the prosecution. Nothing is to be recovered from the applicant. No procedure has been followed to believe that the applicant was involved in the case of illegal business of selling and possessing Ganja. To bolster his arguments, he relied on the case of Ibrahim Khwaja Miya Sayyed @ Raju Vs. The State of Maharashtra, Bail Application No.1296 of 2022 dated 17.03.2023 and the case of Ramesh s/o Changdev Murumkar and others Vs. The State of Maharashtra decided by this Court on 10.08.2023.

4. The learned APP has strongly opposed the application. She would submit that the applicant was found in possession of Ganja. Relying on the case of Hira Singh and Anr Vs. Union of India and Anr, AIR 2020 SC 3255, she would submit that the other substance with the Ganja is not required to be segregated and the

total weight of the Ganja should be considered. She has vehemently argued that the offence is serious. She submits that if such a technical view is taken, the very purpose of the Act may be frustrated. The Court has to prefer an interpretation which advances the purpose of the statute. To bolster her arguments, she relied on the case of State of Himachal Pradesh Vs. Nirmal Kaur @ Nimmo and Others, Criminal Appeal No.956 of 2012 decided on October 20, 2022.

5. The NDPS Act has a long list of the narcotic substance of different kinds. The Government has published the commercial and intermediate quantity of the different drugs. The term 'Ganja' has been defined in Section 2(iii)(b) of the NDPS Act. The term 'Ganja' does not include the leaves, seeds and stalks. There are series of judgments of this High Court holding that the weight of flowering and fruiting tops should be considered to determine the quantity of contraband. Wherever the seized contraband is weighed with the other substance like leaves, seeds, stems etc., together, the Court doubted about the quantity. So far as the Ganja is concerned, the commercial quantity is more than 20 kg. The fact that the entire substance was weighed together without quantifying the weight of the flowering or fruiting tops raises a doubt whether Ganja seized from the applicant was commercial quantity to attract Section 20(c) of the NDPS Act. The FIR *prima facie* does not reflect that separate samples were taken from the seized contraband. Since there is a

scope to doubt about the commercial quantity of the contraband, the rigour of Section 37 of NDPS Act would not come in the way to consider the bail application. The offence under NDPS Act is too technical. The Investigation Officer has to follow the procedure strictly for the reasons that the offence is serious and the punishments are severe. The ratio laid down in the case of Hira Singh (cited supra) appears on different point. Hence, would not assist the learned APP.

6. Considering the consistent view on similarly situated facts, this Court is of the view that the application deserves to be allowed. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant, Sadique Farook Shaikh, be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand) with one solvent surety of the like amount in the above crime, on the conditions that;
 - (a) The applicant shall attend the trial on each and every effective date.
 - (b) The applicant shall not tamper with the prosecution witnesses.

(5)

- (c) The applicant shall attend the concerned police station as and when called on written notice by the Investigation Officer till filing the charge sheet.

(S.G. MEHARE, J.)