

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1498 OF 2024

Arun Swarupsing Rathod

VERSUS

The State Of Maharashtra And Another

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Advocate for Applicant : Mr. Desale Nilesh N.

APP for Respondents/State : Mr. G.O. Wattamvar

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CORAM : S.G. MEHARE, J.

DATED : SEPTEMBER 10, 2024

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the respondents/State.
2. The applicant seeks bail in Crime No.280 of 2024 registered with Navapur Police Station, District Nandurbar for the offences punishable under Sections 8(C), 20 (B)(ii)(C) and 22 of the Narcotic Drugs and Psychotropic Substances Act ('NDPS Act' for short) and Section 34 of the Indian Penal Code.
3. The vehicle in which the applicant was travelling with Ganja was intercepted. The driver and pillion told the police that the applicant was the owner of Ganja. The contraband was weighed. It was measured 3.997 kg. The prosecution thereafter took the applicant to another co-accused from where a huge quantity has been recovered.

4. Learned counsel for the applicant submits that Section 52A of the NDPS Act have not been followed. The samples were extracted immediately after recovery of the so-called Ganja from the vehicle intercepted by the police. The quantity recovered from the applicant was less than the commercial quantity. Hence, he deserves bail.

5. Learned APP has strongly opposed the application. He would submit that pursuant to the information of the informant, a huge quantity i.e. commercial quantity of Ganja has been recovered. There was direct evidence against the applicant that he was transporting Ganja to sell in the market. Since the offence is serious, total quantity is commercial, the applicant does not deserve bail.

6. The Hon'ble Supreme Court in the case of Simarnjit Singh V/s State of Punjab, 2023 (3) Crimes 168 has held that taking samples on the spot of the incident immediately after the seizure of the contraband, is impermissible to convict the accused. The NDPS Rules, 2022 were specific about the procedure to be followed for samples. Rules 8, 9 and 10 of those Rules are relevant. But apparently it appears that the police erred in not following the rules as well as committed mistake extracting the samples on the spot of the incident. So far as this applicant is concerned, from his possession the quantity recovered was less than the commercial quantity. In view of the law laid down by the Hon'ble Supreme Court in above case on

the NDPS Act for consideration for bail, the applicant deserve bail.

Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant, Arun Swarupsing Rathod, 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 the above crime, on the conditions that;
 - (a) The applicant should not tamper with the prosecution witnesses and should attend the trial on each and every date.
 - (b) The applicant should not indulge in identical offence.

(S.G. MEHARE, J.)