



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 2298 OF 2023

Dnyaneshwar Namdeo Kajale
Age : 41 years, Occu. : Agri.,
R/o. : Relgaon, Tq. Sillod,
Dist. Aurangabad

.. Applicant

Versus

The State of Maharashtra
(At the instance of Sillod Rural
Police Station)

.. Respondent

Mr. Abhaysinh K. Bhosle, Advocate for the Applicant.
Mr. Satish A. Gaikwad, APP for Respondent.

CORAM : SANJAY A. DESHMUKH, J.

DATED : 15th JANUARY, 2024.

P C. :-

. This is an application for grant of regular bail under Section 439 of the Code of Criminal Procedure. The applicant is arrested in the Crime No. 269/2023 registered with Sillod Rural Police Station for the offence punishable under Section 20 (A) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "N.D.P.S. Act").

2. It is alleged that, the applicant has grown the cannabis/Ganja in the land plot No. 53 of village Relgaon, Taluka Sillod, District Aurangabad. The informant - Police Inspector of Police Station, Aurangabad Rural along with two panchas raided in that agricultural

land. He found that cannabis were standing in the farm. All those were taken away and seized. It was weighing 353.52 Kg. worth Rs. 21,18,000/- (Rs. Twenty One Lakh and Eighteen Thousand only). The seized panchanama drawn up. The samples were collected and seized in the presence of panchas and the Magistrate. It is also alleged that wife of this applicant favours the statement that applicant has collected that cannabis for cultivating lands.

3. The learned advocate for the applicant submitted that, the lands were seized, however, there was no segregation of the Ganja as defined under Section 2 (B) of the NDPS Act. He relied upon the order of this Court in the case of *Subhash Baburao Patil Vs. The State of Maharashtra in Bail Application No. 1363/2023* dated 24.08.2023, particularly on paragraph Nos. 7 and 8 of the said order. The paragraph Nos. 7 and 8 of the said order are reproduced as under :

“7. This Court in the case of *Dagdiram S/o Devrao Mundhe Vs. The State of Maharashtra (Bail Application No.637 of 2021)* dealt with similar issue and recorded that in absence of segregation of the flowering or fruiting tops of cannabis plants, the seized plants cannot be termed as Ganja within the meaning of Section 2 (b) (c) of the N.D.P.S. Act, 1985. Similar view is reiterated by this Court in case of *Shaikh Mohammad Shaikh Amir Vs. The State of Maharashtra (Bail Application No.1 of 2020)*. The learned Advocate appearing for the applicant further relies upon the order of this Court in the matter of *Ibrahim Khwaja Miya Sayyed @ Raju Vs. The State of Maharashtra (Bail Application No.1296 of 2022)* and *Ramesh Changdev Murumkar and Another Vs. The State of Maharashtra (Bail Application No.1271 of 2023)* which reiterate the aforesaid legal position.

8. Applying principles of law espoused in judgments relied on behalf of the applicant, in absence of segregation of the seized plants from flowering or fruiting tops, the court would not be in position to draw definite conclusion regarding exact quantity of contraband substance. The material relied by prosecution in charge-sheet falls short to throw light on this crucial aspect. In absence evidence regarding exact quantity of prohibited material and its scientific segregation, no presumption can be drawn about existence of commercial quantity of seized material that would attracts bar under section 37 of the N.D.P.S., Act, 1985. Unless prosecution brings on record exact weight of contraband substance after its segregation from cannabis plants and fruiting tops, prosecution cannot bank upon section 37 of the N.D.P.S., Act, 1985. In that view of the matter, case is made out for grant of bail.”

4. The learned advocate for the applicant prays for grant of bail.
5. Heard learned A.P.P for the State. The learned A.P.P submitted that even if the stems, leaves etc. are segregated from the cannabis/Ganja plants its weight will be certainly more than 20 Kg. which may be more than commercial quantity as per the standing order under the N.D.P.S. Act.
6. The learned A.P.P. pointed out the statements of the witnesses particularly, statement of father and uncle of this applicant who have stated that the applicant planted those Ganja trees in the plot No. 53. Lastly, he prayed to reject the application.
7. There is no dispute that there was no segregation of the seized plants from flowers, fruits, stems etc. The definition of Ganja as defined under Section 2 (B) of the N.D.P.S. Act does not include

fruiting, tops etc. Therefore, the quantity of the said Ganja exceeds commercial quantity as per the standing order i.e. more than 20 Kg. Thus, the quantity of seized alleged Ganja is more than 350 Kg is reasonably doubtful quantity and the applicant is therefore entitled for bail on certain conditions.

8. The application is allowed.

9. The applicant in connection with Crime No. 269/2023 registered with Sillod Rural Police Station for the offence punishable under Section 20 (A) (B) of the N. D. P. S. Act be released on bail on execution of P.R. bond of Rs. 1,00,000/- (Rs. One Lakh only) with one surety of the like amount on following conditions :-

- i) The applicant shall not tamper with the evidence and shall not pressurize the prosecution witnesses.
- ii) The applicant shall not leave the State of Maharashtra without prior permission of the Court till the conclusion of the trial.
- iii) The applicant shall attend the trial Court and co-operate for expeditious hearing of the case.

10. The application is disposed of.

(SANJAY A. DESHMUKH, J.)

PS.B.