

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 1009 OF 2023

Sandip Shankar Gangurde Applicant

Versus

The State of Maharashtra Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 834 OF 2023

Tushar Santosh Bhosale Applicant

Versus

The State of Maharashtra Respondent

Mr. Narayan G. Rokade, for the applicant in both ABAs.

Smt. M.H. Mhatre , APP for the State/Respondent in both ABAs.

CORAM :SARANG V. KOTWAL, J.

DATE : 4th APRIL, 2024

P.C. :

1. Both these Applications are decided by the common order because they arise out of the same subject matter.

2. The Applicants are seeking anticipatory bail in connection with C.R No.199 of 2022 registered at Niphad Police Station, Nashik, on 24/08/2022, under Sections 20(b), 20(b)(ii)

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and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”).

2. Heard Mr. Rokade, learned counsel for the Applicants and Ms. Mhatre, learned APP for the Respondent-State.

3. The FIR is lodged by Police Constable Sachin Dharankar. He was attached to Pawarwadi Police Station, Malegaon. He was included in a special squad. On 24/08/2022, the informant and the other officers were told that police constable Rohom had received a secret information that some persons were carrying ganja for sale in a Scorpio vehicle bearing No. AP-28-DA-5061. The vehicle was coming from Yeola and going towards Nashik. The Police officers prepared to conduct a raid. They called two panchas. They kept their dog squad, testing kit and other articles ready for conducting a raid. The information was received at 6.00 a.m. Preparation to conduct the raid was made and the raiding party reached the spot near Shanti Nagar, Triphuli at 7.45 a.m.. The officers concealed themselves in the vicinity. The said

vehicle came at the spot at 8.30 a.m.. It was intercepted. There were two persons travelling in the vehicle namely Suraj Shinde and Ajay Pawar. Search of the vehicle was conducted. There were nine gunny bags containing more than 20 kg of ganja in each of them. The total quantity was 196 Kg. It is mentioned that the ganja consisted of leaves, seeds and sticks. It was tested with the help of the testing kit. It answered positive for the test of ganja. Both the persons were arrested. Suraj Shinde informed that the Applicant Tushar Bhosale had purchased that ganja from unknown persons from Visakhapatnam. The samples from each of the gunny bags were taken. The contraband was seized. The FIR was lodged and the investigation was conducted. As of today, the charge-sheet is filed.

4. Learned counsel for the Applicants made the following submissions.

The Applicant Sandip's name is not mentioned in the FIR. In the FIR as well as in the panchnama, there is no mention of flowering or fruiting tops of the seized contraband. Therefore, it

would not fall within the meaning of ganja as defined under the NDPS Act. The letter sent to CA by the investigating agency also does not make reference to fruiting or flowering tops. He relied on the order passed by a single Judge Bench of this Court on 29/08/2022 in the case of **Kunal Kadu Vs. Union of India** in ABA No. 2173 of 2022 to support his contentions. He also submitted that there was no mention of compliance of Section 52-A of the NDPS Act.

5. Learned APP submitted that the statements of arrested accused Suraj Shinde and Ajay Pawar were recorded where they have described the entire conspiracy and have mentioned about the role played by both the Applicants including Sandip Gangurde. The quantity of contraband is huge. The commercial quantity is 20 Kg and what was recovered was 196 Kg of ganja. The CA report clearly mentioned that the samples sent answered positive for ganja. She submitted that on the facts, the order referred by learned counsel for the Applicant in case of Kunal Kadu is distinguishable. There is compliance of Section 52-A of the NDPS Act.

6. I have considered these submissions. Suraj Shinde and Ajay Pawar have described the entire offence in detail. Both of them had gone with both these Applicants Tushar and Sandip to Visakhapatnam on 21/08/2022. The Applicant Tushar has spent Rs. 7 lakhs in procuring that ganja. When the accused Ajay and Suraj were arrested and when their vehicle was intercepted, the Applicants Sandip and Tushar were following them in another vehicle. At this stage, for the purpose of anticipatory bail application, these statements can be considered to see connection of the present Applicants with the offence. The order referred to by learned counsel for the Applicants in case of Kunal Kadu (supra) itself mentioned in paragraph 17 that whether the substance is 'Ganja' will have to be determined on the facts of each case. Therefore in the present case, I am considering the facts of this case. In the said paragraph of that Judgment, it is mentioned that in that case substance which was seized was green leafy substance and there was no reference of the flowering and fruiting tops. In the present case, description is that the articles seized consisted of leaves, seeds and sticks. More importantly, the

samples from seized articles were drawn from each of the gunny bags and those very samples were sent for CA examination. For each of the samples CA report mentioned as follows:

“ Flowering/ fruiting tops mixed with pieces of leaves, stocks and seeds in a zip lock polythene”.

This was the nature of the samples received by the C.A. and result of analysis was that in each of samples at Exhibit 1 to 9, it was mentioned that these samples were of ganja and ganja falls under section 2(iii)(b) of the NDPS Act. Said Section read thus

“ (b) ganja, that 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.”

7. Thus the samples taken from each of the nine bags contain all the necessary ingredients to constitute ganja. The samples included flowering/ fruiting tops. At this stage, there is nothing to show that those samples were tampered with or they were not of the seized contraband. The charge-sheet also mentioned that certificate under section 52-A of NDPS Act is given by the Additional Chief Judicial Magistrate, Nashik on

31/08/2022.

Thus, at this stage, there is sufficient and serious material against the Applicants. The offence is grave and serious and therefore, the Applicants' custodial interrogation is absolutely necessary. They cannot be protected under section 438 of Cr.P.C. Both the Applications are rejected.

(SARANG V. KOTWAL, J.)