

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3490 OF 2023**

Vinod Rajaram Shinde	...	Applicant
versus		
The State of Maharashtra		Respondent

Mr.Kiran Gogavale, Advocate for the Applicant.

Ms.Shilpa G.Talhar, APP for the Respondent/State.

Mr. Santosh Patil, PSI, ANC Kandivali Unit, Crime Branch, Mumbai.

CORAM : SHIVKUMAR DIGE, J.

DATE : 2nd MAY, 2024.

P.C. :

1. By this application, the applicant is seeking bail in NDPS Special Case No.1494 of 2021 arising out of C.R. No.56 of 2021 registered with ANC Mumbai and pending before Special NDPS (Court Room No.42), Greater Bombay, for offences under Sections 8(c) read with 20(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act).

2. It is the case of the prosecution that on 1st July 2021 at about 17.40 hours, the team of Anti Narcotic Cell was deputed to trace an absconding accused. The NCB team saw one person near Surabhi Jewellers, Kathewadi Chowk, Malad carrying two bags. His conduct appeared to be suspicious. He tried to flee away from the spot on seeing them. The NCB team apprehended the said person, who disclosed his

name as Vinod Rajaram Shinde. Since he gave evasive replies, the presence of panchas was secured and his personal search was taken after complying all the statutory provisions. It is stated that 22 Kgs of contraband i.e. ganja was recovered from him. In the course of investigation and on the basis of the information furnished by the said person, accused No.2-Samadhan Tawde came to be arrested at Nashik on 3rd July 2021 and 10 Kg of ganja came to be seized from his possession. It is alleged that, on the basis of the information given by said Samadhan Tawde, 50 Kg of Ganja came to be recovered from Shivaji Satpute at Ahmednagar, who came to be arrested on 6th July 2021. The investigation has been completed and charge-sheet has been filed.

3. It is the contention of learned counsel for the applicant that accused Nos.2 and 3 have been released on bail. Learned counsel further submitted that as per seizure panchanama dated 1st July 2021, the alleged contraband consisted of stalk, green leaves, flower, fruit and seeds. He submitted that as per Section 2(iii)(b) of NDPS Act, ganja means flowering or fruiting tops of the cannabis plant. Therefore, stalk ought not to have been included while weighing the seized ganja. Learned counsel further submitted that the NCB team weighed the ganja together without quantifying the weight of the flowering or fruiting tops. The seized ganja was not segregated and the stalk was not weighed separately. The weight of the so called contraband was close to commercial quantity. Hence, it raises serious doubt. Learned counsel further submitted that the

police officer recovered one sack bag and one goni from the possession of the applicant. They opened the sack bag containing three packets of ganja. They mixed the entire three packets of ganja and then drew two samples. They also opened goni bag containing eight packets of ganja. They mixed the entire eight packets of ganja and then drew the samples. Learned counsel submitted that the samples were not taken in presence of magistrate and not certified by the magistrate, so it is total non-compliance of Section 52(A) of the NDPS Act. Learned counsel further submitted that the applicant is behind the bar for more than two years and nine months, yet charge has not been framed. Hence, requested to allow the application.

4. It is contention of learned APP that the applicant is apprehended by NCB team and 22 Kg ganja was recovered from his possession, which is of commercial quantity. If the applicant is released on bail, he may abscond. Hence, requested to reject the application.

5. I have heard both learned counsel, perused the FIR and charge-sheet.

6. After apprehending the applicant, the police has seized the contraband from the applicant. It appears from the record that investigating agency has taken samples of contraband without taking recourse to Section 52(A) of the NDPS Act. The co-accused – Shivraj Gorakh Satpute has been released on bail by this Court (Coram : Anuja Prabhudessai, J.) on the ground that there is non-compliance of Section

52(A) of NDPS Act. It appears from record that seizure of ganja from the applicant is with stalk, green leaves, flower, fruit, seeds etc.. Section 2 (iii) (b) of NDPS Act defines ganja as under :

“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;”

The weight of ganja found in possession of the applicant is 22 kg. The commercial quantity of ganja is 20 kg. The NCB team has not separated stalk, green leaves and seeds from the ganja seized from the applicant as well as there was non-compliance of Section 52(A) of the NDPS Act. Hence, the applicant is entitled for bail and I pass following order :

O R D E R

- (i) The application is allowed.
- (ii) The applicant, who is facing trial in NDPS Special Case No.1494 of 2021 pending on the file of Special NDPS (C.R.42), Greater Bombay, is ordered to be released on bail in the sum of Rs.50,000/- with one or two sureties in the like amount;
- (iii) The applicant shall report NCB, Mumbai Zonal Unit, Mumbai, once in three months on the first Monday of the month between 11.00 a.m. to 2.00 p.m.

- (iv) The applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.
 - (v) The applicant shall not leave the State of Maharashtra without prior permission of the court.
 - (vi) The applicant shall not interfere with the witnesses or tamper with the evidence in any manner.
 - (vi) The Applicant shall keep the Investigating Officer informed of his current address and mobile contact number, and/or change of residence or mobile details, if any, from time to time.
7. It is made clear that observations made hereinabove be construed as expression of opinion only for the purpose of bail and the same shall not in any way influence the trial in other proceedings.

(SHIVKUMAR DIGE, J.)