

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 121 OF 2024**

Sukhdeo @ Vikas Yashwant Rathod ... Applicant
versus
State of Maharashtra Respondent

Mr. Vikrant V. Phatate a/w. Mr. Mahesh S. Arjun, Advocate for the Applicant.
Smt. Ranjana D. Humane, APP for the State.

CORAM : SHIVKUMAR DIGE, J.

DATE : 23rd OCTOBER, 2024.

P.C. :

1. By this Application, the application is seeking bail in Crime No. 661 of 2021 registered with Vijapur Naka Police Station, Solapur for offence punishable under section 20(C), 29 and 8 (C) of NDPS Act. It is prosecution's case that on 19th December, 2021, the complainant Suraj Dastgir Mulani, Asst. Police Inspector attached to Vijapur Naka Police Station was on night patrolling duty along with his staff. When they reached near Bharati Vidyapeth Vijapur Road, at that time two vehicles were going in high speed. The complainant got suspicious about those two vehicles and he gave signal to stop them but they did not stop. One mobile vehicle of complainant obstructed those two vehicles near Inchangiri Math. When police staff reached at the spot, two persons from Innova Car came out and ran away and one person who was in Tavera

Vehicle ran away along with vehicle. At that time, Complainant caught one person and they took him and upon further enquiry, he stated his name as Sukhdev Rathod, thereafter, he opened the door of the said Innova Car, the Complainant his officer found packet with brown cover in the said vehicle. The complainant informed the Senior Police Inspector. Thereafter, the complainant and his team took those packets and Innova Car to Vijapur Naka Police Station. It is alleged that in the said Innova Car police found 311 packets of contraband substance with total weight of 623.650 kg. with a value of Rs.1,24,73,000/- and it was seized by the complainant. During enquiry, the apprehended person i.e. applicant disclosed the name of other persons, who ran away from the incident spot. The police seized the contraband articles and prepared the panchnama before panchas and seized vehicle.

2. It is contention of learned counsel for the Applicant that the applicant has been falsely implicated in this case. The contraband was not seized from the personal search and it was seized from the car. Applicant was the occupant of the Innova Car and he is not owner of the car. The police weighted the *ganja* along with leaves and seeds. It is a settled law that it cannot be termed as *ganja* if *ganja* is weighted with leaves and seeds. Applicant is behind bard around three years. Considering this fact, learned counsel requested to allow the application.

3. It is contention of learned APP that the Applicant has been

arrested on the spot. He was travelling in the Innova Car. At the instance of applicant, police has seized contraband of commercial quantity around 620 kg. of ganja which shows the involvement of the applicant in crime. If applicant released on bail, he may abscond as other co-accused are absconding. Hence, requested to reject the application.

4. I have heard both learned counsel. Perused the FIR, Charge-sheet produced on record. As per the prosecution's case two persons ran away from the Innova Car and during the search, police found ganja packets in the Innova Car. Applicant is not owner of the Innova Car and he was occupant of the Innova Car. While weighting ganja, police has weighted the said ganja with leaves and seeds. As per the definition of Ganja, section 2 (iii) (b), ganja, that is the flowing 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. This Court [Coram: Bharati Dangre, J.] on 29th August, 2022 in the case of Kunal Dattu Kadu vs. Union of India has observed that ganja contraband cannot be termed along with leaves and fruits.

5. In view of the above, I pass following order:

- (a) Application is allowed.
- (b) Applicant – Sukhdeo 2 Vikas Yashwant Rathod be enlarged on bail in Crime No. 661 of 2021 registered with Vijapur Naka Police Station, Solapur on furnishing P.R. Bond of Rs.25,000/-

with one or more sureties in the like amount.

- (c) Applicant shall attend the concerned police station as and when called.

(SHIVKUMAR DIGE, J.)