

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

BAIL APPLICATION NO. 636 OF 2024

Sultana Rafiq Khalil Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Shabbir Shora a/w Ms. Rutuja Waghmare and Mr. Aftab Mujawar, for Applicant
- Mr. Mayur S. Sonavane, APP for Respondent.
- Ms. Durga N. Chaudhari, P.I. Mahim Police Station, present.

CORAM : MANISH PITALE, J.

DATE : 19th July, 2024.

P. C. :

1. Heard, Mr. Shabbir Shora, learned counsel for the applicant and Mr. Mayur S. Sonavane, learned APP for the State.
2. The applicant is seeking bail as she was arrested on 22nd April, 2023, in connection with First Information Report No.0222 of 2023, dated 22nd April, 2023, registered at Police Station Mahim, District Brihanmumbai, for the offences under Sections 8(c) and 20(b) (ii)(c) of the Narcotic Drugs and Psychotropic Substances Act.
3. The applicant has remained behind bars since then i.e. for a period about 1 year and 3 months.
4. The learned counsel for the applicant submits that in the present

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case, the investigating authority claims that contraband *ganja* was recovered from the applicant by way of chance recovery. It is alleged that although initially it is claimed that one gunny bag was in possession of the applicant containing contraband, the *panchanama* further records two such bags. It is specifically submitted that the *panchanama* executed on 21st April, 2023, which led to registration of the FIR records that in the two bags allegedly found in possession of the applicant there were leaves, flowers, fruits, seeds and twigs, which together were treated as contraband *ganja*. In that context reliance was placed on definition of “*Ganja*” under Section 2(iii) (b) of the NDPS Act, to contend that since the contraband was not weighed in its individual parts, there is nothing to support the assertion of the investigating authority that the entire 51 k.g. of material recovered from the two bags was indeed *ganja*.

5. The learned counsel for the applicant further criticized the manner in which the samples of the contraband was prepared and also the manner in which the samples were drawn, to be sent to the laboratory for chemical analysis. Reliance was placed on orders passed by this Court in similar circumstances in the cases of *Ibrahim Khwaja Miya Sayyed @ Raju Vs. The State of Maharashtra* (order dated 17th March, 2023 in Bail Application No. 1296 of 2022) and *Hari Mahadu Valse Vs. The State of Maharashtra* (order dated 29th July, 2021 in Bail Application No. 2299 of 2019), to claim

that since relief was granted to the applicants in the said applications, this Court may consider enlarging the applicant on bail. It is emphasized that the applicant is a woman, who is a single mother of three children and the said aspect may also be taken into consideration.

6. On the other hand, learned APP submits that perusal of the statement leading to registration of the FIR and the *panchanama* indicates that huge quantity 51 k.g. of contraband was recovered from the two bags in possession of the applicant. The same was found to be *ganja* on preliminary examination. Samples were drawn and application was moved before the Magistrate immediately on 03rd May, 2023, for compliance under Section 52(A) of the NDPS Act, thereby indicating that the authority took all necessary steps to ensure that the samples were properly drawn and sent for analysis to the laboratory. It is submitted that in the light of the huge quantity of contraband recovered from the applicant, this Court may not show any indulgence to the applicant.

7. This Court has considered the rival submissions in the light of the material available on record. The *panchanama* dated 21st April, 2023, leading to registration of the FIR shows that, according to the investigating authority, the applicant was found in possession of two bags containing contraband *ganja*. At this stage, it would be appropriate to refer to the definition of *ganja*

as given in Section 2(iii)(b) of the NDPS Act. The same reads as follows :

“(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; and”

8. A perusal of the definition shows that it is not the entirety of the Cannabis plant that is covered under the definition of *ganja*, but, only the flowering or fruiting tops of the cannabis plant, excluding seeds and leaves is considered *ganja*. In the present case, the *panchanama* specifically records that the material allegedly found in the two bags in possession of the applicant consisted of leaves, flowers, fruits, seeds and twigs of the plant. The entirety of the material has been treated by the investigating authority as *ganja* and on that basis the 51 k.g. of material recovered from the bags is presumed to be *ganja*. The samples were drawn and sent for analysis to the laboratory.

9. This Court is of the opinion that if the entirety of the said material weighed 51 k.g. and only part of it could answers the description of *ganja*, the material on record does not indicate as to whether the portion of the material that could be treated as *ganja* indeed weighed more than 20 k.g., which could be said to be commercial quantity. In this situation, the applicant has made out a strong *prima facie* case in her favour to contend that there is deficient material on record to show that commercial quantity of the

contraband was recovered from the possession of the applicant.

10. This is the view adopted by this Court in the aforementioned cases of **Ibrahim Khwaja Miya Sayyed @ Raju Vs. The State of Maharashtra** (*supra*) and **Hari Mahadu Valse Vs. The State of Maharashtra** (*supra*), while granting relief to similarly situated accused persons.

11. Apart from the above, there is substance in the contention of the applicant that the manner in which the samples were prepared and material was drawn therefrom to be sent for analysis to laboratory, it is unclear as to from which bag the material was drawn as a sample to be sent for analysis to laboratory. This is another factor making out a *prima facie* case in favour of the applicant.

12. It is not in dispute that applicant does not have any criminal antecedents. She is a woman, said to be single mother of the three children and she has already suffered incarceration for a period about one year and three months.

13. In view of the above, this Court is inclined to allow the present application.

14. Accordingly, the application is allowed in the following terms :

(A) The applicant shall be released on bail in connection with

FIR No.0222 of 2023, dated 22nd April, 2023, on furnishing PR bond of ₹ 50,000/- and one or two sureties in the like amount to the satisfaction of the Trial Court.

- (B) The applicant shall cooperate with the Trial Court and attend the proceedings regularly.
- (C) The applicant shall not tamper with the evidence in any manner. The applicant shall not influence the informant, witnesses or any other persons concerned with the case.
- (E) The applicant shall upon release immediately inform the Investigating Officer about her Contact number and residential address and update the same in case of any change.

15. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled.

16. It is made clear that the observations made in this order are limited to the question of grant of bail to the applicant and that the Trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

17. The application is disposed of.

(MANISH PITALE, J.)