



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.150 OF 2024

Santlal Makhanlal Lilhare

Vs.

The State of Maharashtra, Through Police Station Officer Ramnagar,
Gondia District Gondia

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. S. Manohar, Advocate for applicant.
Ms. H. N. Prabhu, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 18/03/2024

1. The present application is moved by the applicant under Section 439 of the Code of Criminal Procedure Code in respect of Crime No.156/2022 registered with Police Station, Ramnagar, Gondia, District Gondia for the offences punishable under Sections 8(c), 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act').

2. The crime is registered on the basis of report lodged by Rajesh Sukhraj Bhure serving as a Police Constable at Bhandara. As per the allegation on 30.06.2022, he was on a Crime Detection Squad and was on duty. At that time, he was called by his superior and disclosed that they had received the secret information that one Duster car bearing No. MH-13-BN-9066 in which the contraband article

Ganja is transported, immediately they proceeded towards Katangikala Temni road. When they were on a Naka bandi duty at that time, they have witnessed one Duster car of Brown colour wherein three persons were travelling. They intercepted the said car and from the said car they have seized 20.5 Kg. Ganja in presence of the panchas. They have obtained the samples in presence of the panchas from the said gunny bags. As per the allegations from the present applicant the contraband of 7.3 Kg was seized. After following the due procedure, the contraband articles were seized and forwarded to the Chemical Analysis. On the basis of the said report, police have arrested the present applicant. The applicant since date of his arrest behind bar.

3. Learned Counsel Mr. A. S. Manohar for the applicant submitted that as far as the quantity is concerned, which is not a commercial quantity. He further submitted that other co-accused are already released on bail and the application of the present applicant is rejected merely because there was a criminal antecedent which is of the year 2020. He further submitted that as the quantity is not a commercial quantity rigor under Section 37 of NDPS Act is not attracted. He also pointed out from the investigation papers that there is no compliance of Section 52-A of NDPS Act as the samples are not produced before the Magistrate while conducting the inventory. He submitted that as per the definition of

ganja which defines 'ganja', is a flowering or fruiting top of the cannabis plant excluding the seeds and leaves when not accompanied by the tops. The recitals of the FIR or the Seizure panchnama nowhere shows that whatever seized was flowering or fruiting tops. It only shows that it was the leaves. So the contraband article which was seized is not within the definition of 'ganja'. He submitted that considering the quantity is not commercial quantity, there is no compliance of Section 52-A of NDPS Act and the other co-accused are already on bail. The present applicant also be released on bail on the ground of parity.

4. The learned APP strongly opposed the application on the ground that the ground of parity is not available to the present applicant, as there are criminal antecedents against him. She further submitted that the quantity which is seized from the present applicant is more than which is permitted for the person's use. Therefore, commercial quantity is seized from the present applicant and another co-accused. In view of that, the application deserves to be rejected.

5. Having heard both the sides and perused the investigation papers made available on record in the form of charge-sheet and other documents including the inventory certificate relied upon by the

learned Counsel for the applicant as well as learned APP.

6 As far as the compliance under Section 52-A of NDPS Act, is concerned, in view of the judgment of the Constitution Bench of the Hon'ble Apex Court in the case of **Karnail Singh vs. State of Haryana** reported in **(2009) 8 SCC 539** wherein it is held that whether there was a compliance or not is a matter of trial.

7. Next contention is that there is no dispute that the quantity which is seized from the present applicant is 7.5 Kg i.e. non-commercial quantity. There is no dispute that commercial quantity is relation to the NDPS Act for 'ganja' means any quantity grater than 20 Kg.

8. The Section 2(iii)(b)(c) defines 'ganja' as the flowering or fruiting 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 any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom;

9. Thus, the definition of term 'ganja' defines and clarifies that 'ganja', is the flowering or fruiting

tops of the cannabis plant excluding the seeds and leaves when not accompanied by the tops.

10. In the case in hand, as seen from the FIR and the investigation papers, the quantity of 20.5 Kg of ganja was seized from the vehicle. The certificate of inventory shows that plastic bag 'A' contains 13.196 Kg ganja, Plastic bag 'B, contains 7.076 Kg grams of ganja. It means 20.5 Kg. Gram ganja was seized. The recitals of the panchnama and the First Information Report lodged by the informant shows that the description mention is green black colour leaves and seeds. It nowhere discloses that it was having fruiting or flowering tops. All the bags are opened and weighed, the flowering or fruiting tops are not separated before weighing the same. After weighing the aforesaid ganja, it was seized in the same sacs/bags with seal along with the particulars of crime. Thus, it reveals that the samples were not produced before the Magistrate.

11. The above state of affairs would make it clear that there is nothing on record to *prima facie* show that before carrying weight of the seized plant of ganja, the Investigating Officer has separated the flowering or fruiting tops of the cannabis plant in order to ascertain the exact quantity of ganja. In fact, there is no mention in the inventory report that the sealed substance includes the flowering or fruiting tops of the cannabis plant. This fact becomes

further clear from the panchnama also. The seizure panchnama also nowhere shows that the flowering or fruiting tops of cannabis plant were, in any other manner, separated in order to ascertain the correct quantity of ganja.

12. Thus, on perusal of the material on record shows that what was seized was the leaves and there was no quantification of flowering tops and without separating the flowering or fruiting tops, the ganja was weighted. As the seized material was not weighed after separating of flowering tops and therefore it is difficult to ascertain whether quantity can be said to be commercial. Therefore, the rigor under Section 37 of NDPS Act is not attracted. The power to release the accused on bail subject to the limitation is not applicable here.

13. The learned Counsel rightly placed reliance on the decision of this Court in **Criminal Application (BA) No.101/2023 (Parveen Supda Chavan and another Vs. State of Maharashtra) decided on 23.06.2023, Bail application No.291/2023 (Imtiyaz Sattar Shaikh Vs. The State of Maharashtra)** decided at Principal Seat on 1st November 2023, wherein similar set of facts considering the quantity which is seized is not commercial quantity, released the applicant on bail.

14. In view of that present application also deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant **Santlal Makhanlal Lilhare** in connection with Crime No.156/2022 registered with Police Station, Ramnagar, Gondia, District Gondia for the offence punishable under Sections 8(c), 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 shall be released on bail on furnishing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall report to the concerned Police Station once in a month on first Saturday between 11.00 a.m. to 1.00 p.m.
- (iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.
- (v) The applicant shall not indulge himself in similar type of the activities.
- (vi) On contravention of the said conditions the bail granted to the present applicant deserves to be cancelled.
- (vii) The trial Court shall not influence by the observation of this Court which is only for the purpose of the bail.

(8)

43.ba.150.2024

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate