



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.147 OF 2024

(Atmaram s/o Gopalsing Sable Vs. The State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. T.S. Deshpande, Advocate for the applicant.
Ms R.V. Sharma, APP for the non-applicant/State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- MARCH 21, 2024.

By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure. The applicant came to be arrested on 05/02/2021 in connection with Crime No.49/2021 registered with Police Station Shivaji Nagar, District Buldhana for the offence punishable under Sections 20(b) (ii) of the The Narcotic Drugs and Psychotropic Substances [Act, 1985](#) (the NDPS Act).

2. As per the allegation that on 04/02/2021 when the informant was present in the Police Station, he received the secret information that one vehicle bearing No. AP-27/Q-6133 is proceeding from bypass road towards Khamgaon Nandura. Some persons are transporting the contraband article Ganja, he immediately rushed towards spot along with raiding party members. After following the due process, he conducted the search. During the search, four nylon gunny bags were found containing wet green colour leaves, flowering buds, stems,

and the seeds accordingly, he seized the seized contraband articles. After weighing the same, it was 85 Kg 650 gm. He seized the said contraband articles and brought to the Police Station. Before sealing the sample was taken from one bag, and after completion of the process, he has filed the report. On the basis of said report, police have registered the crime.

3. Learned Counsel for the applicant submitted that the contraband article seized is not the Ganja in view of the definition of Section 2-B of the NDPS Act. He further submitted that the term “Ganja” has defined in Section 2(iii)(b) of the NDPS Act. He submitted that the term “Ganja” as defined in Section 2(iii) means 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. He further submitted that a plain reading of Section would reveal seeds and leaves would not be covered under the definition of Ganja unless they are accompanied by flowering or fruiting tops of the cannabis plant.

4. He further submitted that the Investigating Officer has not collected the samples from each of the bag, and only collected the sample from one of the bag, and the said samples are also not produced before the Magistrate. Thus, there is no compliance of the mandatory provisions, and therefore, the present applicant to be released on bail. In support of his contention he placed

reliance on the order passed by this Court in *Criminal Application (BA) No.550/2023 (Malkan s/o Sardarsing Bassi Vs. State of Maharashtra) dated 20/12/2023* and *Naeem Ahmed alias Naim Ahmad Vs. Govt. Of NCT of Delhi in Criminal Appeal No.1247 of 2024* decided on *28/02/2024*.

5. Learned Additional Public Prosecutor strongly opposed the application on the ground that the CA report shows that it contains the flowering tops and fruiting tops and it is analyzed as a Ganja. In view of the rigour under Section 37 of the NDPS Act, the application deserves to be rejected.

6. I have perused the record and submission advanced by the learned Counsel for the respective parties. From recitals of the FIR, it reveals that the contraband articles seized by the Investigating Officer is the wet green leaves, stems, seeds and the buds. The term “Ganja” defines and clarifies that “Ganja” is flowering or fruiting tops of cannabis plant excluding seeds and leaves when not accompanied by tops.

7. In the case in hand, as seen from the FIR and the investigating papers that quantity of 85 Kg and 650 grams Ganja was seized from the vehicles, the samples are drawn immediately from one Gunny Bag in absence of inventory.

8. The inventory report only shows the quantity which was seized. From the inventory, it nowhere reveals that either the samples are obtained before the Magistrate or the samples taken are produced before the Magistrate. The description of the contraband articles is also not mentioned in the inventory report.

9. 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 flowering or fruiting tops of cannabis plant in order to ascertain exact quantity of “Ganja”. In fact, it is not mentioned in the inventory report that the seeds substance includes flowering or fruiting tops of cannabis plant. The recitals of the FIR and the Panchanama also nowhere shows that seeds substance includes flowering or fruiting tops of cannabis plant. This fact also makes it further clear that the Investigating Officer has not ascertained the correct quantity of Ganja. The Chemical Analyzer Report also shows that greenish, brownish colour leaves, flowering tops, seeds and stalks are forwarded for the analysis.

10. Thus, perusal of the material on record shows that what was seized was stems, leaves and plants, and there was no quantification of flowering tops and without separating flowering or fruiting tops, the contraband articles was seized. On the basis of said the co-accused is already released on bail.

11. Learned Counsel for the applicant also placed reliance on the decision of the Hon'ble Apex Court in Naeem Ahmed alias Naim Ahmad Vs. Govt. Of NCT of Delhi (supra) wherein the Hon'ble Apex Court has considered delay in trial and observed that taking into consideration the totality of the circumstances, especially the period of custody undergone by the appellant however, without expressing any views on the merits of the case, the appeal is allowed and the appellant is ordered to be released on bail.

12. In the present case also, the applicant is arrested on 05/02/2021 i.e. more than 2 years and there is no progress in the trial. Thus, in view of the observation of the Hon'ble Apex Court in the abovesaid decision also the applicant is entitled to be released on bail.

13. The above facts and circumstances on record shows that the description mentioned in the panchnama and FIR wherein the description is not including that the contraband article was along with the flowering or fruiting tops of cannabis plant. It also apparent that the Investigating Officer has not separated it to quantify. In view of that also the applicant has made out the case for grant of bail.

14. As far as the submission regarding the non-compliance of Section 52-A of the NDPS Act is concerned at this stage, this aspect cannot be considered.

15. In view of Section 37 of the NDPS Act, power to release an accused on bail subject to limitation contained in Section 439 of the CrPC coupled with limitation contemplated in view of Section 37 itself, i.e. (i) there are reasonable ground for releasing that accused is not guilty of such an offence and (ii) he is not likely to commit such offence while on bail. The expression reasonable grounds means something more than prima facie ground it contemplates substantial probable cause for believing that accused is not guilty of offence and record satisfaction about the existence of such grounds. But, the Court has to consider the matter as if it is not pronouncing the judgment of acquittal and recording finding of not guilty.

16. Bearing the aforesaid proposition in mind, it is necessary to look into nature of accusation and evidence collected by the prosecution. Though the report of analysis refers to the sample as greenish brownish colour leaves, flowering tops, seeds, and stalks but the description is not mentioned either in the panchnama or in the FIR. The another ground raised by the learned Counsel for the applicant also requires to be taken into consideration as far as the trial is not yet commenced. In view of that, the application deserves to be allowed. Hence, following order is passed:

(i) The application is allowed.

(ii) The applicant – Atmaram s/o Gopalsing Sable in connection with Crime No.49/2021 registered with Police Station Shivaji Nagar, District Buldhana for the offence punishable under Sections 20(b)(ii) of the The Narcotic Drugs and Psychotropic Substances Act, 1985, shall be released on bail on his executing a P.R.Bond in the sum of Rs.50,000/- with one solvent surety of the like amount.

(iii) The applicant shall report to the concerned police station once a month i.e. first Saturday of every month between 10:00 am and 1:00 pm.

(iv) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

(v) The applicant shall furnish his cell phone number(s) and address with the address proof. Additionally, he shall furnish names of his two relatives and their addresses with address proofs.

(vi) Needless to mention that the observations made in this order are purely prima facie for deciding the present

application for grant of bail only and learned Judge before whom the trial will be conducted shall not get influenced by the said observations.

17. The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*