



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

CRIMINAL APPLICATION (BA) NO.325/2024

Devidas s/o Shamrao Dhakare

Vs.

The State of Maharashtra thr. P.S.O., P.S. Pusad (Rural), Dist. Yavatmal

WITH

CRIMINAL APPLICATION (BA) NO.272/2024

Sukhdev Shyamrao Dhakare

Vs.

The State of Maharashtra thr. P.S.O., P.S. Pusad, Dist. Yavatmal

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

Court's or Judge's orders

Shri V.R. Thote, Advocate for applicant in BA No.325/2024
Shri S.S. Sheikh, Advocate for applicant in BA No.272/2024
Shri K.R. Lule, APP for non-applicant/State

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20/09/2024

Both the applicants came to be arrested on 06/10/2023 in connection with Crime No.784/2023 registered with Police Station Pusad (Rural), District Yavatmal, under Section 20, 20(b)(i), 20(b)(ii), 22(c), 29 and 46 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "NDPS Act").

2. The accusation against the present applicants is on the basis of report lodged by A.P.I. Gajanan Gajbhare attached with the Local Crime Branch, Yavatmal, wherein he has alleged that he had received secret information that in the agricultural field at village Ghonsara, and Tadi Daulat, Tq. Mahagaon,

District Yavatmal, the applicant namely Devidas Shamrao Dhakare, Sukhdev Shamrao Dhakare have illegally cultivated the cannabis plants for the purpose of illegal sell in the market and accordingly, the complainant forwarded the information to his Superior Officer. He called two Panchs, other Police staff and other personnel like photographer and carrying the articles reached at the spot and found that in Survey No.93/2/C, the applicant namely Devidas Shamrao Dhakare had cultivated 350 plants of the cannabis and out of that 270 plants was found to be fully grown and accordingly, the said plants of the cannabis were uprooted from the said land and same was weighed and it was around 69 kg. It is further alleged that the another applicant namely Sukhdev Shamrao Dhakare who is owner of Survey No.93/2/A had cultivated 350 plants of the cannabis, which were uprooted from the said land and the same was weighed of 71 kg.

3. The informant after following the due process, obtained the samples as well as cannabis plants were also forwarded for the inventory. The inventory was carried out. The samples were forwarded to Chemical Analyser. The applicants were arrested. In this way, there were total 507 kg. of the cannabis plants having Rs.25,60,625/- came to be recovered and seized.

4. During investigation, the investigating officer has also collected 7/12 extract of both the agricultural

fields and after completion of investigation, charge sheet was submitted.

5. Heard learned Counsel Shri V.R. Thote, for the applicant in Criminal Application (BA) No.325/2024 and learned Counsel Shri S.S. Sheikh, for the applicant in Criminal Application (BA) No.272/2024. They both have submitted that the recitals of the First Information Report and the panchanama shows that whatever uprooted and seized by the investigating agency were green leaves. The FIR nowhere shows that it was accompanied with the flowering tops or fruiting tops.

6. It is submitted that as far as the definition of 'Ganja' is concerned, the leaves are not included in the definition of 'Ganja'. They further submitted that even, the inventory report nowhere shows that the plants which were uprooted were along with the fruiting tops or flowering tops. Moreover, weight is not taken by segregating the same. Thus, the contraband articles which are seized by the investigating agency are not 'Ganja' comes within the definition of 'Ganja' given in the NDPS. It is further submitted that there is no compliance of Section 52 A also. In view of that the applicants deserve to be released on bail as bar under Section 37 will not attract.

7. *Per contra*, learned APP for the State strongly opposed the said application and submitted that commercial quantity of the cannabis plants were

uprooted and seized by the investigating agency. As far as compliance of Section 52 A is concerned, which is not required as the samples were obtained by following the procedure given under the Code of Criminal Procedure. Therefore, he further submitted that the cannabis plants which are seized comes under the definition of 'Ganja'. As far as the CA report is concerned, which is yet to be received. Considering that there is rigour under Section 37 of the Act, the applications deserve to be rejected.

8. After hearing the learned Counsel for the applicants and learned APP for the State, perused the investigating papers. From recitals of the FIR, it reveals that the informant had received the secret information that present applicants who are the agriculturists have cultivated the cannabis plants in their agricultural field. Accordingly, after forwarding the information to the Superior, raid was conducted and present applicants were found in possession of 69 kg. and 71 kg. respectively, the cannabis plants which were cultivated in their field. One more person was also arrested as he was also cultivated the cannabis plants in his agricultural field weighing 190 kg. Accordingly, the samples were obtained in presence of panchas. The contraband articles are forwarded for the inventory. The inventory is also prepared. The inventory report also shows that whatever was produced before the Judicial Magistrate First Class, was the plants having wet leaves as far as the seizure

panchanama and the recitals of the FIR shows that whatever was seized weight 'Ganja' or wet leaves of cannabis plants. Accordingly, the inventory was conducted and after completion of investigation, the charge sheet was filed.

9. There is no dispute that commercial quantity in relation to NDPS Act for 'Ganja' means any quantity greater than 20 kg. The Section 2 (iii) (b) and (c) defines 'ganja', as 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 any mixture, with or without any neutral material, of any of the above forms of cannabis or anything prepared therefrom.

10. 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.

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 had separated the flowering or fruiting tops of 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 cannabis plant. This fact becomes further clear from

the panchanama also. The seizure panchanama 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. Thus, on perusal of the material on record shows that what was seized was plant and there was no quantification of flowering tops and without separating the flowering or fruiting tops, the ganja was weighed.

12. Thus the contraband article which is seized in the present case, appears to be the only leaves which are not included in the definition of ganja. As far as the CA report was concerned, which are yet to be received. At this stage, considering the statement of witnesses, recitals of the FIR and the seizure panchanama and inventory report, which shows that the seized material was the wet leaves of the cannabis plants which are not included in the definition of ganja.

13. Learned Counsel for applicants submitted that there is non compliance of Section 52 A, Chapter 5 of the NDPS Act pertains to procedure, Section 51 contend in the said Chapter provides that the provision of the Criminal Procedure Code shall apply in so far as they are not inconsistent with the provisions of the NDPS Act to all warrants issued and arrest, searches and seizures made under the NDPS Act.

14. Thus, unless there is anything contrary provided in the NDPS Act, in relation to all warrants issued and arrest, searches and seizures carried out by the investigating agency. During the course of investigation, provision of Code of Criminal Procedure would apply. In light of the above, the entire issue revolves whether the contraband articles which are seized was Ganja. Admittedly, the contraband articles which were seized are only the green leaves which are not included in the definition of Ganja and therefore, the rigour under Section 37 of the NDPS Act would not apply.

15. Admittedly, the samples were not obtained and produced before the Magistrate. It is undoubtedly true that the investigating agency though has not followed the procedure under Section 52-A of the NDPS Act, but the samples are obtained by following due procedure under the Code of Criminal Procedure. As far as the definition of Ganja is concerned, as already observed that the leaves are not included in the definition of Ganja and, therefore, rigour under Section 37 will not attract. Even accepting that there is a rigour that contemplated regarding accused being not guilty based on reasonable ground. The expression reasonable ground means something more than *prima facie* grounds, it contemplates substantial probable cause for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provisions requires existence of

such facts and circumstances as has sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. Thus recording of satisfaction on this aspects is *sine qua non* for grant of bail.

16. In the light of the above, well settled legal position as the foundation fact that the seized article is a ganja, itself is not established from the investigation papers and, therefore, the applicants have made out a case for grant of bail. In view of that, the applications deserve to be allowed. Accordingly, I proceed to pass the following order:

ORDER

- i) Both applications i.e. Criminal Application (BA) No.325/2024 and Criminal Application (BA) No.272/2024 are allowed.
- ii) The applicant- Devidas s/o Shamrao Dhakare, in Criminal Application (BA) No.325/2024, and the applicant- Sukhdev Shyamrao Dhakare in Criminal Application (BA) No.272/2024, be released on bail in connection with Crime No.784/2023 registered with Police Station Pusad (Rural), District Yavatmal, under Section 20, 20(b)(i), 20(b)(ii), 22(c), 29 and 46 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on executing PR bond of Rs.50,000/- each with one surety in the like amount.
- iii) The applicants shall attend the concerned Police Station once in a month on 1st of every month

and the investigating officer shall record their presence.

iv) The applicants shall attend the proceedings before the learned trial Court without seeking any exemption unless there are exceptional circumstances.

v) The applicants shall not leave the jurisdiction of the Yavatmal District without prior permission of Additional Sessions Judge, Pusad, District Yavatmal.

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

17. Both the applications are disposed of.

JUDGE

R.S. Sahare