



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

CRIMINAL APPLICATION (BA) NO.259 OF 2024

Vandeo Shamrao Dhakare

Vs.

State of Maharashtra, Through Police Station Officer, Pusad Rural,
District Yavatmal

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

Court's or Judge's orders

Mr. Yuvraj Dhande, Counsel for the applicant.

Mr. K. R. Lule, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 01/10/2024

1. The applicant came to be arrested on 06.10.2023 in connection with Crime No.784/2023 registered with Police Station, Pusad Rural, District Yavatmal for the offences punishable under Sections 20, 20(b)(i), 20(b)(ii), 20(c), 29 and 46 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act').

2. The accusation against the present applicant is on the basis of the report lodged by API Gajanan Gajbhare attached with the Local Crime Branch, Yavatmal, wherein he has alleged that he had received a secret information that in the agricultural field village Ghonsara, and Tadi Daulat, Taluka Mahagaon, District Yavatmal, the applicant namely Vandeo Shamrao Dhakare along with the other two accused found 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, and other police staff and other personnel like photographer and carrying the articles reached at the spot and found that the survey No.93/2/b, the present applicant had cultivated 350 plants of the cannabis and out of which some plants were fully grown up and accordingly, the said plants were uprooted from the said land and the same was weighed and it was around 71 Kg. It is further alleged that the another co-accused namely Sukhdev and Devidas who are owners of the respected survey numbers have also cultivated cannabis plants which were uprooted from the said land and seized.

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 applicant is arrested. In this way, there were total 507 Kg. of the cannabis plants worth of Rs.25,60,625/- came to be recovered and seized.

4. During investigation, the Investigating Officer has also collected 7/12 extract of all the agricultural fields wherein the cannabis plants found to be cultivated and after completion of the investigation, charge-sheet was submitted.

5. Heard learned Counsel for the applicant who submitted that the articles or the cannabis plants which have seized as per the prosecution by uprooting the same were only the green leaves. The FIR or the investigation papers nowhere shows it was accompanied with the flowering tops or fruiting tops. It is submitted that as far as the definition of ganja is concerned, the leaves are not included in the definition of ganja. 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 taking by segregating the same. Thus, the contraband articles which are seized by the investigating agency are not ganja within the definition of ganja given under the provisions of the NDPS Act.

6. Per contra, learned APP for the State strongly opposed the said application and submitted that commercial quantity of the cannabis plants were recovered from the possession of the present applicant and therefore, the application deserves to be rejected, in view of rigour under Section 37 of the NDPS Act.

7. After hearing the learned Counsel for the applicant and learned APP for the State, perused the investigation papers from which it reveals that informant had received a secret information that present applicant and the other co-accused who are

the agriculturists have cultivated the cannabis plants in their agriculture field. Accordingly, after forwarding the information to the Superior, the raid was conducted and present applicant was found in possession of 71 Kg. cannabis plants which were cultivated in his field. Two other agriculturists were also arrested and subsequently, they are released on bail. 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 shows that whatever was produced before the Judicial Magistrate First Class, where the plants having wet leaves.

8. There is no dispute that commercial quantity in relation to the 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 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. 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 either segregated the same or the leaves were accompanied with flowering or fruiting tops of cannabis plants in order to ascertain the exact quantity of ganja. In fact, there is no mention in the inventory report that the sealed substance including the flowering or fruiting tops of the cannabis plants. This facts becomes further clear from the panchnama also. The seizure panchnama also nowhere shows that the flowering or fruiting tops of the cannabis plants accompanied with the leaves and the same were segregated 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 without separating the flowering or fruiting tops, the ganja was weighed.

11. Thus, the contraband article which is seized in the present case, appears to be 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 statements of the witnesses, recitals of the FIR, the seizure panchnama 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. Thus, considering that except the

green leaves there was no flowering or fruiting tops which are seized by the Investigating Officer. As far as the present applicant is concerned as already observed that the contraband articles which are seized are not within the definition of ganja and therefore, rigour under Section 37 of the NDPS Act will not attract. Even accepting that there is a rigour that contemplated regarding accused being not guilty based on reasonable grounds. 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 are 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 quo non* for grant of bail.

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

ORDER

- (i) The application is allowed.

(ii) The applicant **Vandeo Shamrao Dhakare** shall be released on bail in connection with Crime No.784/2023 registered with Police Station, Pusad (Rural), District Yavatmal for the offences punishable under Sections 20, 20(b) (i), 20(b)(ii), 20(c), 29 and 46 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on executing PR Bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned Police Station once in a month on 1st of every month and the Investigating Officer shall record his presence.

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

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

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

13. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)