



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

CRIMINAL APPLICATION (BA) NO.536 OF 2024

Bhaiyyaji Mahadeo Kulmethe

Vs.

State of Maharashtra, Through Police Station, Aheri, District Gadchiroli

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

Court's or Judge's orders

Mr. A. M. Chandekar, Counsel for the applicant.

Mr. N. B. Jawade, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 18/09/2024

1. The applicant came to be arrested on 28.02.2024 in connection with Crime No.53/2024 registered with under Section 8(c), 20(a), 20(b)(ii) of the 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 report lodged by Rohan Subhashrao Jawale PSI deputed at Aheri Police Station, he received a secret information of the plantation of ganja by the present applicant in his field under the pretext of vegetable plantation. After completing the necessary formalities, and after following the due process of law and the mandatory provisions under the NDPS Act, the Investigating Officer conducted raid in the field of present applicant which standing in the name of his father. The

Investigating Officer found 15 live plants of ganja including the leaves, stems and flowers and fruiting tops of around 5.5 to 6 ft. length. On conducting the raid of the house also, the raiding party members have found 1 Kg. 800 grams dry ganja having leaves fruiting and flowering plant tops worth of Rs.20,000/-. Accordingly, the entire contraband articles are seized by the raiding party members in presence of the panchas. During the course of raid, the detailed spot panchnama of the field of the present applicant was drawn. The samples were obtained, the weight of 15 live plants came to 45 Kg and 800 grams and during the house search 1 Kg 800 grams dry ganja was found from the back side room of the house. Accordingly, the samples were drawn, the samples were forwarded to Chemical Analysis (CA) as well as the contraband articles are forwarded for the inventory. After completion of the investigation, the charge-sheet was filed.

3. Learned Counsel Mr. Chandekar for the applicant submitted that as far as the involvement of the present applicant is concerned, neither the house nor the agricultural land is standing in the name of the present applicant, but it is in the name of his father. He is not cultivating the said land. There is no material to show that the applicant was cultivating the said land and he has cultivated the said plants. He further submitted that there is no compliance either of Section 42 or of Section 50 of the NDPS Act.

He further submitted that inventory was also conducted at a belated stage. As the flowering and fruiting tops are not segregated and therefore, the weight of the said ganja cannot be of a commercial quantity and therefore, the rigour under Section 37 could not attract as the mandatory provisions are not followed and therefore, the application deserves to be allowed.

4. Learned APP strongly opposed the said application. He submitted that the statements of the various witnesses as well as the presence of the applicant were noted which sufficiently shows that it was the present applicant who was cultivating the said land and planted the said ganja in the field. As far as the compliance under Sections 42 and 50 of the NDPS Act is concerned, there is a compliance. He submitted that as far as the compliance under Section 50 of the NDPS Act is concerned, it is regarding the physical possession of anybody in whose possession the said contraband article was found therefore, there is no need to compliance Section 50 of the NDPS Act, as far as the present case is concerned. He submitted that there is a bar under Section 37 of the NDPS Act as commercial quantity is found along with the present applicant. In view of that, the application deserves to be rejected.

5. After hearing the learned Counsel for the applicant and learned APP for the State, perused the

investigation papers from which it reveals that the contraband articles which are found in the agricultural land which is in the name of the father of the present applicant. The statement of the witnesses and the spot panchnama shows that at the relevant time after receipt of information the raiding party reached at the spot on giving call. The present applicant came out of the house and thereafter, raid was conducted. It is submitted by the learned Counsel that the entire plants were seized by the raiding party members which is not within the preview of definition of ganja.

6. Definition under Section 2(iii)(b)(c) specify ganja as flowering of fruiting tops of cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever, name they may be known what designated, and any mixture, with a without any neutral material, of any of the forms of cannabis or any drink prepared therefrom.

7. Thus, the definition of term ganja clarified that ganja is the flowering or fruiting tops of the cannabis plant excluding the seeds and leaves when not accompanied by the tops.

8. In the case in hand, as seen from the First Information Report and the spot panchnama and seizure panchnama description mentioned is reddish colour leaves, then having flowers and fruiting tops on it. The quantity which was weighed by the raiding

party members by uprooting the plants are 45 Kg and the contraband articles which are seized from the house including the leaves, seeds, flowering tops and fruiting tops weighing of 1 Kg. 800 grams. Thus, admittedly, the contraband found in the house and agricultural field of the present applicant is of a commercial quantity.

9. Much emphasis has been placed on Section 42 of the NDPS Act on behalf of the applicant to contend that the raid conducted was entirely vitiated as there is no compliance of Section 42 of the NDPS Act. Twin requirements of Section 42(1) and 42(2) of the NDPS Act are; firstly, person conducting raid must be an empowered officer, superior to the rank of constable, and secondly, if raid was conducted between sunset and sunrise, the officer conducting such raid must report grounds of belief that if the raid was not so conducted, there would be chance of escape of offender and further that such recorded grounds for his belief shall be communicated to the superior officer within 72 hours. Learned counsel for the applicant submitted that the said requirement is not fulfilled or satisfied.

10. In the context of these twin requirements, apparent conflict between two earlier judgments of the Hon'ble Apex Court was sought to be resolved in the case of **Karnal Singh vs. State of Haryana**, reported in **(2009) 8 SCC 539**. The Constitution

Bench of the Hon'ble Apex Court considered extent of mandatory nature of requirement of Section 42 of the NDPS Act and in what circumstances accused may not get benefits of mere non compliance unless it was established that he suffered prejudice due to such non compliance. After considering scope of Section 42 of the NDPS Act, the Bench concluded that although twin requirement of Section 42 of the NDPS Act requires to be complied with and total noncompliance of the same was impermissible, if there was some delay in compliance which could be explained satisfactorily by placing material on record, such compliance is acceptable.

11. Thus, if the aforesaid judgment is taken into consideration, facts of the present case show that while the informant has received the secret information immediately he along with the raiding party members and the panchas visited the agriculture field as well as house of the present applicant which is standing in the name of this father. The document shows that raid has been conducted and during the raid the contraband articles were found which are cultivated in the agriculture field as well as in the house. As far as the definition of the ganja is concerned the contraband articles seized was along with the fruiting and flowering tops. Thus, the definition of ganja shows that ganja is the flowering or fruiting tops found cannabis plant excluding the seeds and leaves and therefore, the contention of the

learned Counsel for the applicant that it is not within the definition of ganja, cannot be accepted. As far as the raid was conducted by the Police Officer and compliance in view of Section 42 of the NDPS Act is concerned, the communication on record sufficiently shows that immediately said information was forwarded to the superior officer. So there is a due substantial compliance of Section 42 of the NDPS Act.

12. Second submission was that there is delay in the inventory. As far as the delay is concerned, that aspect cannot be considered at this stage. At this stage, considering the compliance and the quantity of the contraband articles which was seized from the agricultural field of the applicant. The rigour under Section 37 of the NDPS Act would attract. In view of Section 37 of the NDPS Act bail can be granted if Court is satisfied that applicant is not likely to commit offence while on bail and the bail can be granted if the Court is satisfied that there are reasonable grounds for believing that the applicant is not guilty of offence.

13. Thus, satisfaction contemplated regarding accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than *prima facie* grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief

contemplated in the provision 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 these aspect is *sine quo non* for grant of bail.

14. In the light of the above well settled legal position, there is sufficient material on record to hold that the applicant is involved in crime. Though learned Counsel for the applicant submitted that agriculture field is not standing in the name of the present applicant nor the house, but it is standing in the name of the father of the present applicant and the statements of the various agriculturists sufficiently shows that the applicant was cultivating the said agriculture field. In view of that, I do not find merits in submissions of learned Counsel for the applicant and there are reasons to believe that the applicant is guilty of said offences.

15. In this view of the matter, the application deserves to be rejected and the same is rejected.

(URMILA JOSHI-PHALKE, J.)