



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

CRIMINAL APPLICATION (BA) NO.737 OF 2024
(Akshay s/o Rajendra Kadam Vs. 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. M.V. Rai, Advocate for the applicant.
Mrs. H.N. Prabhu, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- SEPTEMBER 12, 2024.

By this application, the applicant is seeking bail as he came to be arrested on 10/02/2024 in connection with Crime No.94/2024 registered with Police Station Sevagram, District Wardha for the offence punishable under Sections 8(c), 20(b)(ii), 20(B)IIA and 29 and of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. As per the allegation, on 09/02/2024 secret information was received by the informant that the applicant along with the other co-accused travelling in a Swift Maruti Car bearing No.MH-49-A-6182 transporting and carrying the contraband articles, therefore, the said vehicle was intercepted by the informant along with the raiding party members. On interception of the vehicle plastic gunny bags containing 23.550 kgs Ganja worth of Rs.4,57,000/- was found. By following due procedure, the samples were obtained and the contraband articles was sent for the inventory. The sampled were also forwarded

for the chemical analysis. After arresting the accused and after completion of the investigation, the charge-sheet is filed against the present applicant.

3. Learned Counsel for the applicant submitted that as far as the investigation papers are concerned, it shows that the “Ganja” weighing 23.550 kgs was found along with the present applicant and the other co-accused who were travelling in the said car. He submitted that the flowering and fruiting tops are not segregated before weighing the same and without segregating the same it was weighed, and therefore, it is shown as a commercial quantity. He submitted that the stems or the branches are not included in the definition of “Ganja” if it would have been segregated definitely it would be lesser than the commercial quantity. He further submitted that there is non-compliance of Section 42 as well as 52-A of the NDPS Act. On that count also, the applicant deserves to be released on bail. He submitted that even the inventory nowhere discloses that the contraband articles was weighed by segregating the stems, and therefore, the quantity which was found is not of a commercial quantity. Being it would be lesser than the commercial quantity, the rigour under Section 37 of the NDPS Act would not apply. In view of that, the applicant be released on bail.

4. Learned APP strongly opposed the application and submitted that the recitals of the FIR as well as panchanama and the CA report discloses that the

contraband articles which was seized from the applicant was the “Ganja”. The quantity which was seized was a commercial quantity. As far as the compliance under Section 42 and 52-A of the NDPS Act is concerned it cannot be taken into consideration at this stage i.e. at the time of grant of bail. In view of the rigour under Section 37, the application deserves to be rejected.

5. From the recitals of the FIR it reveals that the contraband articles seized by the Investigating Officer is the wet green leaves, stems, seeds and the flowers. They come back the term “Ganja” as defined in Section 2(iii) means flowering or fruiting tops of cannabis plant (excluding seeds and leaves when not accompanied by tops), by whatsoever, name they may be known or designated. In the case in hand, it is seen from the FIR and the investigation papers that quantity of 23.550 kgs was seized from the vehicle. The samples were drawn immediately from the gunny bags. Admittedly, the samples were not obtained in presence of the Magistrate but the samples were taken in presence of the panchas.

6. 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.

7. 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. This fact also makes it further clear from the panchanama also. The seizure panchanama also nowhere shows that flowering or fruiting tops of cannabis plant where in any other manner separated in order to ascertain correct quantity of Ganja. The Chemical Analyzer Report also shows that greenish, brownish colour leaves, flowering tops and stocks are forwarded for the analysis.

8. Thus, perusal of the material on record shows that what was seized was stems, leaves and plant, and there was no quantification of flowering tops and without separating flowering or fruiting tops, when the contraband article was weighed. As the seized material was not weighed after separating flowering tops, it is difficult to ascertain whether it can be said to be a commercial quantity.

9. As far as the compliance of Section 52-A is concerned the samples were obtained in presence of panchas and nothing is in the NDPS Act that the Code of

Criminal Procedure will not apply. As far as the compliance under Section 52-A is concerned merely because the samples were not obtained in presence of the panchas at this stage, cannot be a ground to release the applicant on bail.

10. Chapter-V of the NDPS Act pertains to procedure.

Section 51 contained in the said Chapter provides that provisions of the Code of Criminal Procedure shall apply insofar as they are not inconsistent with provisions of the NDPS Act to all warrants issued and arrests, searches and seizures made under the NDPS Act.

11. Thus, unless there is anything contrary provided in the NDPS Act, in relation to all warrants issued and arrests, searches and seizures carried out by investigating agency during course of investigation, provisions of the Cr.P.C. would apply, and therefore, the contention of learned Counsel for the applicant that there is non-compliance of Section 52-A cannot be considered at this stage.

12. 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 Cr.P.C. 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.

13. Bearing the aforesaid proposition in mind, it is necessary to look into nature of accusation and evidence collected by the prosecution.

14. The report of analysis refers to the sample as greenish brownish colour leaves, flowering tops, seeds, and stalks. Necessarily, the entire mixture is weighed and found to be 23.550 kgs. On the basis of the same, the applicant is charged for possession and delivering commercial quantity of "Ganja". The discrepancies in the manner of seizure and analysis *prima facie* satisfy that there are reasonable grounds for believing that the quantity found with the applicant is not of a commercial quantity. The panchanama *prima facie* reveals that the seized material contained green leaves, flowering buds, stems and stalks and without separating the same, it is forwarded to the Chemical Analyzer. If it would have been segregated before weighing the same, it would have been below the commercial quantity and if it is below the

commercial quantity the rigour under Section 37 would not apply. It is further held that a plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a *prima facie* look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under the provisions of the NDPS Act.

15. It is significant to note that the definition of “Ganja” under the NDPS Act takes in its ambit only the flowering or fruiting tops of cannabis plants and excludes the seeds and leaves when not accompanied by the tops.

16. Another aspect of the matter is that the leaves and fruiting tops were not separated while weighing quantity of “Ganja”. The samples are not taken before the Magistrate. Thus, the contraband articles which was seized is within the definition of “Ganja”.

17. Thus, perusal of the investigation papers and the material collected with the charge-sheet, at this stage, the applicant has made out a case for grant of bail. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) The applicant – Akshay s/o Rajendra Kadam in connection with Crime No.94/2024 registered with Police Station Sevagram, District Wardha for the offence punishable under Sections 8(c), 20(b)(ii), 20(B)IIA and 29 and of the Narcotic Drugs and Psychotropic Substances Act, 1985 be released on bail on executing PR. Bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant shall not involve himself in similar type of the offence.

(iv) The applicant shall report to the concerned police station once in a month i.e. on every 10th day of every month and the Police Officer of the said police station shall record his presence.

(v) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

(vi) The applicant shall furnish his Cell phone number, address with address proof and the names of his two relatives with their address proof, before the Investigating Officer.

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

18. Needless to mention that the observation made in this order are purely *prima facie* in nature for deciding the present application for grant of bail only and the learned Judge before whom the trial will be conducted shall not get influence by the said observation.

19. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*