



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

CRIMINAL APPLICATION (BA) NO. 979 OF 2024

Falsing Baburao @ Babulal Rathod
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. S. S. Sheikh, Counsel for the applicant.
Mr. N. B. Jawade, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 19/11/2024

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, 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 applicant 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, Taluka Mahagaon, District Yavatmal, the applicant namely Falsing Baburao Rathod and other co-accused 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, one Police staff and other personnel like photographer and by carrying the articles reached at the spot and in the agriculture field Survey No.370 of the present applicant, 610 plants of the cannabis were found to be fully grown and accordingly, the said plants of the cannabis were uprooted from the said land and same was weighed as 123 kg. It is further alleged that from the other co-accused also the cannabis plants were found cultivated in the agricultural land which were uprooted from their land. The other co-accused are already released on bail. On the basis of the said report, police have registered the crime against the present applicant.

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 C.A. report is yet to be received.

4. During the investigation, the Investigating Officer has also collected 7/12 extract of the agricultural field and after completion of investigation, charge sheet was submitted.

5. Heard learned Counsel Mr. Sheikh for the applicant, who submitted that as far as the description given in the First Information Report and the panchnama as well as the inventory reports are concerned, which are not covered under the definition of ganja. He submitted that 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. The inventory report also nowhere shows that it was along with the flowering tops or fruiting tops. He further 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. Thus, considering the same, he submitted that the applicant has made out a case and he be released on bail as bar under Section 37 of the NDPS Act will not attract.

6. 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. There is due compliance of Section 52 A as well as the parts of the plants were segregated and thereafter it were weighed. He submitted that the tops of the plants itself is sufficient to show that it

were the flowering tops and it covered under the definition of 'Ganja'. As far as the CA report is concerned, which is yet not received. Considering that there is rigour under Section 37 of the Act, the application deserve to be rejected.

7. After hearing the learned Counsel for the applicant 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 applicant who is the agriculturists have cultivated the cannabis plants in his agricultural field. Accordingly, after forwarding the information to the Superior, raid was conducted and present applicant was found in possession of 610 kg. plants cultivated in his agricultural field. At the relevant time, other three agriculturist's fields were also raided and 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, was the plants having wet leaves as far as the seizure panchanama and the recitals of the FIR shows that whatever was seized was the wet 'Ganja' or wet leaves of cannabis plants. Accordingly, the inventory was conducted and after completion of investigation, the charge sheet was filed.

8. 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.

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 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 or fruiting tops and the weight was not obtained by separating the same.

11. 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.

12. Learned Counsel for applicant 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.

13. 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.

14. 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.

15. In the light of the above, well settled legal position as the foundation fact that the seized article is a ganja, itself is not, at this stage, established from the investigation papers and, therefore, 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:

ORDER

- i) The application is allowed.
- ii) The applicant - **Falsing Baburao @ Babulal Rathod** shall 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/- with one surety in the like amount.
- iii) The applicant shall attend the concerned Police Station once in a month i.e. on 1st of every month and the Investigating Officer shall record his presence.
- iv) The applicant shall attend the proceedings before the learned Special Court without seeking any exemption unless there are exceptional circumstances.
- v) The observations while passing this order are *prima facie* in nature and the trial Court shall not be influenced by the same.
- vi) The applicant shall not leave the jurisdiction of the Yavatmal District without prior permission of Additional Sessions Judge, Pusad, District Yavatmal.

vii) 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.

16. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)