



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

CRIMINAL APPLICATION (BA) NO. 1133 OF 2024

DINESH VIJAYKANT MISHRA

Vrs.

THE 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

Shri Atharva S. Manohar, Advocate for applicant.

Shri S. V. Narale, A. P. P. for Non-applicant-sole.

CORAM: URMILA JOSHI-PHALKE, J.

DATE : 05/12/2024.

1. The applicant came to be arrested on 29/07/2024 in connection with Crime No.209/2024 registered under Sections 8(c), 20 and 29 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 Police Head Constable Shri Rajendra Mishra alleging that he has received the information that one person is carrying the contraband articles while travelling on the motor cycle. He along with other Raiding Party Members intercepted the said motor cycle and on interception, one brown colour bag having 12 packets were seized from him. It was the leaves, flowers and fruits along with green leaves weight 12 Kgs and 160 grams. The said contraband articles were seized from the said person and he was arrested. On the basis of

said report, police have registered crime against the present applicant.

3. Heard Shri A. S. Manohar, learned counsel for the applicant, who submitted that as far as the seized articles are concerned, admittedly, the flowers and fruiting tops are not separated from the leaves, leaves are not included in the definition of Ganja. If it would have been weighed by segregating the same, the weight would have been reduced. He submitted that the inventory report speaks otherwise the inventory report shows that the contraband articles were only containing the leaves and it nowhere speaks about flowering or fruiting tops. Thus, it is suspicious whether the leaves were accompanied with flowering of fruit trees. If the inventory report is taken into consideration, the same is not within the definition of Ganja. Moreover, the seized contraband article is not of commercial quantity. If it is a quantity and therefore, legal under Section 37 of the NDPS Act will not attract. In support of his contention, he placed reliance on Venktesh Shiva Permal Vrs. State of Maharashtra, reported in 2024 SCC On-Line Bom 251 wherein this Court at Principal Seat considered the aspect and held that where the seizure panchnama does not indicate and the packets were identical and the contents were also identical and the officer effecting search had satisfied himself that the packets were identical in all respects, the mixing of the contents and thereafter, collecting the samples from the said mixture, without anything more, erodes the sanctity

of the samples so collected as representative samples of the bulk. He submitted that as the flowering and fruiting tops are not segregated before weighing the same and the inventory report shows only leaves were found in the Muddemal which was produced in the inventory. The contention of the Investigating Agency that there were fruiting and flowering tops along with leaves appears to be suspicious.

4. Considering all these aspects, applicant be released on bail.

5. Learned APP strongly opposed the application and submitted that the investigation is still in progress. The confessional statement of the present applicant shows that he has procured the same from another person that it needs to be established. He further submitted that considering the involvement of the present applicant now transporting the contraband articles, the application deserves to be rejected.

6. After hearing both sides and on perusal of investigation papers, it reveals that the recitals of the FIR shows that on receipt of secret information, the motor cycle bearing No.MH-35/AQ-49-4713 was intercepted wherein two persons were proceeding. The applicant was one of the said person. From them, one brown colour bag was seized wherein one packet was held. As per the recitals of the FIR, two packets were mixed up and thereafter, weight of the said contraband article was weighed and it was found that the quantity is 12 kg and

160 grams. As far as the description of contraband article in the First Information Report and the seizure panchnama is concerned, which shows that it includes green leaves, flowers, fruits and seeds. As far as the definition of Ganja is concerned, Ganja means any quantity flowering or fruiting tops of cannabis plant (excluding the seeds and leaves when not accompanied by the tops) by whatever name they may be known or designated or any mixture, with or without neutral material, of any of the above forms of cannabis or anything prepared therefrom in view of Section 2(iii)(b) and (c) of the NDPS Act.

7. Thus, the definition of term “Ganja” defines and clarifies that Ganja is a flowering and fruiting tops of cannabis plant excluding the seeds and leaves when not accompanied by the tops. As far as the present matter is concerned, the inventory report is completely silent about the existence of flowering and fruiting tops along with the greenish leaves. Therefore, the contention of learned counsel for the applicant has substance that it is suspicious and whether the leaves were accompanied with a fruiting or flowering tops. Moreover, the quantity seized from the present applicant is not segregated to have correct weight of the contraband articles. The underlined object which was seized was selected in a bag and it was not segregating before weighing the same and therefore, the exact quantity which was seized, in view of definition of Ganja is not brought before the Court. Even accepting the

quantity received from the present applicant, it is intermediate quantity and therefore, the legal under Section 37 of the NDPS Act will not attract.

8. Considering the investigation is completed and charge sheet is already filed, applicant has made out application for grant of bail, In view of that, I passed the following order :-

ORDER

- i] The application is allowed.
- ii] The **applicant – Dinesh Vijaykant Mishra** shall be released on bail in connection with Crime No.209/2024 registered under Sections 8(c), 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 on executing PR Bond of Rs.25,000/- with one solvent surety in the like amount.
- iii] The applicant shall not induce, threat or promise to any witnesses, who are acquainted with the facts of the present case.
- iv] The applicant shall attend the proceedings before the Sessions Court, Gondia without seeking any exemption unless there are exceptional circumstances.
- v] The applicant shall not indulge in the similar type of activities.

vi] The applicant shall attend the concerned Police Station as and when required for investigation purpose on receipt of notice of eight days in advance.

9. The application is disposed of.

[URMILA JOSHI-PHALKE, J.]

Choulwar