



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

901 CRIMINAL APPLICATION NO. 3127 OF 2025  
IN APEAL/571/2024

MAHADEV JALINDAR HARKAL  
VERSUS  
THE STATE OF MAHARASHTRA

...

Mr. Sudarshan J. Salunke, Advocate for Applicant.  
Mr. N. B. Patil, APP for Respondent-State.

...

WITH  
CRIMINAL APPEAL NO. 571 OF 2024

MAHADEV JALINDAR HARKAL AND ANOTHER  
VERSUS  
THE STATE OF MAHARASHTRA

...

Mr. Sudarshan J. Salunke, Advocate for Applicant.  
Mr. N. B. Patil, APP for Respondent-State.

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CORAM : SANJAY A. DESHMUKH, J.  
DATE : 26<sup>th</sup> AUGUST, 2025

PC:-

1. Heard learned counsel for the applicant and learned APP for the State.
2. The applicant/accused is convicted for the offence punishable under Sections 20(C) of the Narcotic Drugs and Psychotropic Substances (NDPS) Act vide judgment and order dated 01.06.2024 passed by the Special (NDPS) Judge and Additional Sessions Judge – 3, Jalna, in Special Case No. 250 of 2021. The relevant part of sentence is as under :-

*The accused no. 1) Mahadev Jalindar Harkar and accused no. 2) Iqbal Ahmed Shafi Ahmed and the accused no. 3) Ganesh Sampatti Mendke, are hereby convicted as per the provisions of section 235(2) of the Cr.P.C. for an offence punishable under section 20(C) of the NDPS Act and thereby they are sentenced to suffer rigorous imprisonment for a period of ten years and each of them shall pay fine of Rs.1,00,000/- (Rs. One lac only), in default of each to undergo rigorous imprisonment for one year.*

3. Learned counsel for the applicant invites attention of this Court to page No. 102 of the record. Learned counsel submits that it is alleged by the prosecution that the applicant was in possession of 32 packets of Ganja total weighing to 65 kg and 720 gm. Learned counsel submits that all these packets were opened up and mixed up. Learned counsel submits that thereafter, the packets were re-sealed in two different pockets i.e. A-1 and A-2. He submits that 32 packets ought not to have been mixed together. The learned counsel for the applicant submits that there is error in drawing the samples. He, therefore, prays for suspension of substantive sentence and release of applicant / accused on bail.

4. Per contra, learned APP submits that when the packets were identical in nature, it is permissible to mix all the packets and prays for rejection of the application.

5. The learned counsel for applicant placed reliance on the notification issued by the Ministry of Finance (Department of Revenue)

No. G.S.R. 339(E) dated 10.05.2007, which furnishes an exhaustive manner and mode of disposal of drugs ending with a certificate of destruction.

6. Nothing is brought to the notice of the Court that the samples were mixed up before sealing them and producing them before the Magistrate. So also, the Court has not dealt with this aspect of the matter.

7. The applicant in the instant case is in jail for 15 months. The sentence imposed is 10 (ten) years.

8. Perusal of record shows that the appeal is already admitted and the appeal will take own time to conclude. The applicant in the instant case is behind bars for 15 months. In view of the above, I deem it appropriate to suspend the substantive sentence imposed on the applicant and release him on bail.

9. In view of the above, the substantive sentence imposed on the applicant is suspended. The applicant be released on bail on such terms and conditions to the satisfaction of the trial Court. Accordingly, the application stands disposed of.

**(SANJAY A. DESHMUKH, J.)**