



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 2268 OF 2024

Kamarali Chand Shah,
Age 44 years, Occ. Labour,
R/o Lamkana, Tq. & Dist.
Aurangabad.

... Applicant

Versus

The Police Station Officer,
Karmad Police Station,
Aurangabad, Tq. & Dist.
Aurangabad.

... Respondent

.....

Mr. P. P. More, Advocate h/f Mr. Nitin S. Ingle, Advocate for the
Appellant.

Mr. V. M. Chate, APP for Respondent-State

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 08.01.2025

Pronounced on : 10.01.2025

ORDER :

1. This is an application seeking regular bail by virtue of arrest of applicant in consequence to crime no 0464 of 2024 registered at Karmad Police Station, District Chhatrapati Sambhajinagar (Aurangabad) for offence under Sections 20(b)(i), 20(b)(ii) and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 [NDPS Act].

2. Learned counsel for the applicant submitted that applicant is arrested in above crime on 18.11.2024. He submitted that here, there

are allegations of cultivation of ganja, but police party has quoted the quantity of entire plants, leaves, roots, earth and as such, exact quantity of ganja has not been weighed. There is no segregation to show exact quantity of actual ganja. He submits that the quantity seized is not commercial quantity. Secondly, according to him, there is no evidence that applicant has taken cultivation. According to him, there is possibility of natural growth of plants in question.

3. On the count of no evidence about actual flowering or fruiting tops of ganja, as well as to support his contention that there is no concrete evidence about applicant cultivating ganja, learned counsel for the applicant seeks reliance on the following judgments :

- i. ***Laxman Nivrutti Borade v. State of Maharashtra and another*** [Bail Application No. 728 of 2024 decided by Single Judge of this Court on 13.06.2024].
- ii. ***Mohammad Jakir Nawab Ali v. The State of Maharashtra*** [Criminal Application (BA) No.602/2024 decided by this Court at Nagpur on 02.09.2024]
- iii. ***Ibrahim Khwaja Miya Sayyed @ Raju v. The State of Maharashtra*** [Bail Application No. 1296 of 2022 decided by the Principal Seat at Bombay on 17.03.2023]
- iv. ***Rahul Bhimrao Pawar v. The State of Maharashtra*** [Criminal Bail Application No. 2977 of 2021 decided by the Principal Seat at Bombay on 03.01.2022]

- v. ***Hari Mahadu Valse v. The State of Maharashtra*** [Bail Application No. 2299 of 2019 decided by the Principal Seat at Bombay on 29.07.2021]
- vi. ***Navnath s/o Namdev Wayal and another v. The State of Maharashtra*** [Bail Application No. 1320 of 2021 decided by this Court on 22.11.2021]
- vii. ***Alakh Ram Appellant v. State of U.P.*** AIR 2004 SC 2907

4. Finally he submitted that above lapses are crucial. Applicant is behind bars since November 2024. That, now entire investigation is almost over and as nothing further is to be recovered, learned counsel prays for relief of bail.

5. While opposing the application, learned APP pointed out that serious offence is committed. As many as 94 plants of ganja were found to be cultivated in the field and there is no denial to that extent. He further pointed out that the plants had grown to the height of around 4 to 5 feet. Therefore, according to learned APP, with such quantity of crop, it cannot be said to be natural growth. Rather it is deliberate cultivation. He further submitted that investigation is still incomplete and as charge sheet is yet to be filed, he opposes the application.

6. Heard both sides. Perused the FIR dated 18.11.2024. Police Officer, who is informant herein, has lodged report that on secret information, visit was paid to land gat no. 185 and police party came across plants of height of around 4 to 5 feet having flowers. In presence of panchas and even Agricultural Officer, suspecting cultivation to be of ganja, panchanama was drawn. Applicant was said to be present around, and on being questioned about ownership of the land, he has answered that land belongs to him. Thus, applicant was found to be present at the spot field. Informant officer reported that, after compliance as provided under Section 50 of the NDPS Act, seizure was done and description and quantity of the same is provided in the report itself. On his report, crime for above offence seems to be registered.

7. Fundamental grounds for bail raised are that, there is no segregation; quantity weighed is not of exclusive ganja, but it includes entire plants, leaves and roots; that, flowers, which are essential to attract the offence, are not seized. Further, according to him, there is possibility of plants growing in natural course and there is no deliberate cultivation. On this count, he took this court through the judgments of this Court as well as Nagpur Bench and Principal Seat at Mumbai respectively.

8. On carefully going through the papers it is emerging that, on visit being paid on secret information to land gat no.185, police officer and his team comprising of Agricultural Officer and panchas noticed 94 plants having leaves as well as flowers. There is specific mention of yellow flowers over the said plantation. Taking into consideration the number of plants seized, i.e. 94, submissions put forth that, growth could be in natural course and there is no cultivation, loses its significance. FIR specifically speaks about yellow flowers also grown to the said seized plants. Applicant was present and he himself admitted that he owned land gat no. 185. Therefore, with such material, the grounds put forth for bail cannot be considered, more particularly when there is seizure of over 94 plants and there is clear reference of yellow flowers. Taking the above referred quantity of seizure into consideration, this Court is not inclined to grant relief as prayed. Hence, I proceed to pass the following order:

ORDER

The application is dismissed.

[ABHAY S. WAGHWASE, J.]