

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 4632 OF 2024

Ajit Sukhdev Jagtap
Versus
State of Maharashtra

...Applicant

...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 4414 OF 2024**

Avinash @ Avi Babu Rathod
Versus
The State of Maharashtra

...Applicant

...Respondent

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Mr. Ayaz Khan a/w Adv. Zehra Choriania, Ms. Vrushali Maindad, Ms. Mallika Sharma, Adv. Shaheen Kapadia, Advocate for the Applicant in Bail Application No.4632 of 2024.

Ms. Bhagyasha K. a/w Priyal Gupta i/by Mr. Vijay Kurle, Advocate for the Applicant in Bail Application No.4414 of 2024.

Ms. Veera Shinde, A.P.P. for the Respondent – State.

Mr. Sanjay P. Kshirsagar, (API), Crime Branch, Solapur City, present.

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CORAM : N. R. BORKAR, J.
DATE : 11th MARCH, 2025

P.C.:

1. As both these applications are arising out of one and the same crime, they are being disposed of by this common order.

2. The applicants came to be arrested in Crime No.186 of 2024 registered at Faujdar Chavadi Police Station, District:Solapur, for the offences punishable under Sections 8(c), 20(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS Act”).

3. On 26.03.2024, on the basis of secret information, the house of the applicant Ajit Jagtap, (applicant in Criminal Bail Application No.4632 of 2024) was searched and 77.521 Kg. Ganja was found. It is alleged that said Ganja which was found in the house of the applicant Ajit Jagtap, was purchased by him from the applicant Avinash Rathod (applicant in Criminal Bail Application No.4414 of 2024).

4. I have heard the learned counsel for the applicants and learned A.P.P for the Respondent-State.

5. The learned counsel for the applicants has drawn my attention to the definition of Ganja. It is submitted that Section 2(iii)(b) of the NDPS Act defines Ganja as the flowering or fruiting tops of the cannabis plant. It is submitted that in the Seizure Panchanama there is no reference of flowering or fruiting tops of the cannabis plant. It is further

submitted that the alleged contraband was found in different packets, however the same was mixed together. It is submitted that in view of the decision of this Court in the case of **Ashok Manik Mhetre Vs. The State of Maharashtra and Anr.** in Bail Application No.4261 of 2024 vide order dated 15th July 2024, the same is not permissible. The learned counsel for the applicants further submits that there is nothing to show that the samples were drawn in accordance with Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022.

6. On the other hand, the learned A.P.P. for the Respondent-State submits that the applicants are involved in serious crime. It is submitted that commercial quantity of contraband was recovered and thus Section 37 of the NDPS Act would attract and unless the condition mentioned in said Section are satisfied, the applicants are not entitled to be released on bail. It is further submitted that the applicants are involved in one more crime of similar nature.

7. This Court in **Ashok Manik Mhetre Vs. The State of Maharashtra and Anr.** (supra) has held as follows:

“34. As noted above, sub-clause(b)(e) of the Standing Instructions 1/88 and sub-clauses 2.5 and 2.8 of the Standing Order 1/89 envisage bunching of packets/containers in lots and thereafter, drawing of representative sample from each packet/container of that lot and mixing together to make a composite whole from which the samples are drawn for that lot. However, the principal condition is that the officer effecting the seizure must find that the packets/containers seized together are of identical size and weight bearing identical marking and contents of each packet give identical results on colour test by drug identification kit, and thus, conclusively indicate that the packages are identical in all respects.

35. Evidently, the underlying object of the Instructions is to ensure that the sample which is collected represents the bulk, unmistakably. Invariably, in pursuance of the provisions of the Act, and the Drug Disposal rules, the bulk is disposed. When a person is sought to be fastened with liability for possessing a particular quantity of contraband, in bulk, on the basis of the sample collected, the Court ought to have the assurance that the sample so collected represented the entire bulk. The insistence on collecting samples from each of the packets and containers stems from this objective”.

8. I have perused the charge-sheet. Prima-facie there appears to be substance in the submission of the learned counsel for the applicants. Considering the over all facts and circumstances of the case, I am inclined to release the applicants on bail.

ORDER

- (i) Criminal Bail Application is allowed;
- (ii) The applicants are directed to be released on bail in connection with Crime No.186 of 2024 registered at Faujdar Chavadi Police Station, District:Solapur, for the offences punishable under Sections 8(c), 20(c) and 29 of the NDPS Act, on executing PR. Bond in the sum of Rs.25,000/- each with one or two sureties in the like amount;
- (iii) The applicants shall attend the concerned Police Station once in a month i.e. on first Saturday between 11:00 a.m. to 1:00 p.m. till conclusion of trial;
- (iv) The applicants shall not commit any other crime.
- (v) Application stands disposed of accordingly.

(N. R. BORKAR, J.)