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

BAIL APPLICATION NO.4392 OF 2024

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Ambalal Jagdish Jaat

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Shailesh Kharat with Bharat Shinde, Parthraj Ware,
Neha Rathod and Govind Mundhe i/by Mr.
Sumitkumar Nimbalkar for the applicant.

Ms. Pallavi N. Dabholkar, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : JULY 18, 2025

P.C.:

1. By the present application filed under Section 439 of the Criminal Procedure Code, 1973, the applicant seeks regular bail in connection with Crime Register No. 232 of 2022 registered with Kapurbawadi Police Station for offences punishable under Section 20(b) read with Section 8(c), and Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act").

2. The prosecution case, in brief, is as follows: The First Information Report has been registered on the basis of a complaint lodged by Mr. Vijay Abhiman Patil, who is attached to the Crime Branch, Wagule Unit-5, Thane. It is alleged that on 7th July 2022, at about 08:00 hours, Mr. Patil received specific information from a

reliable informant that a tempo vehicle transporting approximately 100 kilograms of contraband ganja would be passing through the Bhiwandi-Thane road. Acting on the said information, the investigating team conducted a trap. After ensuring compliance with the procedural safeguards prescribed under the NDPS Act, including taking independent panch witnesses, the team proceeded to the location mentioned by the informant.

3. It is alleged that at around 21:10 hours, the team noticed a blue-coloured tempo bearing registration No. MH-04-HS-1485, which matched the description given by the informer. Upon intercepting the said vehicle, a search was carried out in accordance with the provisions of Section 50 of the NDPS Act. During the said search, the team recovered a total of 110 kilograms of ganja. It is further alleged that the ganja was found in 11 bags. The said contraband, along with the applicant's mobile phone, was seized and sent for forensic examination. Based on the recovery, Crime No. 232 of 2022 came to be registered with Kapurbawadi Police Station.

4. Learned counsel appearing for the applicant submitted that the entire seizure is vitiated due to the non-segregation of flowering tops from the seeds and leaves. He submitted that the 22 samples drawn from the 11 bags and sent for chemical analysis were not differentiated component-wise, which is a requirement for attracting rigour under Section 20(b)(ii)(C) of the NDPS Act. In support, reliance was placed on the judgment of the Co-ordinate Bench of this Court in *Kunal Dattu Kadu v. Union of India* (Criminal Anticipatory Bail Application No. 2173 of 2022, decided

on 29th August 2022), where the Court granted anticipatory bail in somewhat similar factual circumstances. He further contended that the applicant has been incarcerated since 8th July 2022, and trial has not commenced. Relying on the recent judgment of the Hon'ble Supreme Court in *Mohd. Muslim @ Hussain v. State (NCT of Delhi)*, 2023 SCC OnLine SC 352, it was submitted that prolonged custody of the undertrial, without any progress in trial, infringes the right to personal liberty under Article 21 of the Constitution of India and is a relevant factor for considering bail even in NDPS offences.

5. Per contra, the learned APP opposed the application and submitted that the seized quantity of ganja is 110 kgs., which is far above the threshold of commercial quantity under the NDPS Act. It was submitted that the description in the seizure panchnama and the FIR clearly mentions that the recovered ganja consisted of flowering tops and leaves, and not just green leafy substances. The FSL report has confirmed that all 22 packets tested positive for ganja. It was further submitted that, pursuant to the applicant's disclosure, co-accused persons were apprehended and an additional quantity of 350 kgs of ganja was seized, establishing the applicant's active participation in a larger criminal conspiracy for trafficking of narcotic substances. Hence, the provisions of Section 29 are also attracted.

6. The learned APP distinguished the case of *Kunal Dattu Kadu* by pointing out that in that case the substance seized was only green leafy matter with no reference to flowering or fruiting tops, which is not the factual scenario herein. Furthermore, reliance was

placed on the decision of the Co-ordinate Bench of this Court in *Pravin Anil Narbhavar v. State of Maharashtra & Anr.*, 2024 SCC OnLine Bom 3929, wherein it has been held that where ganja is seized in a mixed form (i.e., with stems, roots, seeds, leaves and flowering tops), and where such components are not segregated, the entire seized substance must be considered as a whole for determining the total weight under Section 20(b)(ii)(C) of the NDPS Act. It was contended that in view of the quantity seized being far beyond the commercial quantity, the rigours of Section 37 of the NDPS Act squarely apply, and no grounds exist to satisfy the twin conditions—firstly, that there are reasonable grounds to believe that the accused is not guilty of the offence, and secondly, that he is not likely to commit any offence while on bail.

7. Having given my anxious consideration to the rival submissions advanced by the learned counsel for the applicant and the learned APP for the State, and upon careful perusal of the material placed on record, this Court is of the considered view that the applicant is alleged to have been found in conscious possession of 110 kilograms of contraband substance, namely ganja, which is well above the threshold limit prescribed as "commercial quantity" under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985.

8. The seizure panchnama as well as the contents of the First Information Report reveal that the contraband was recovered from a tempo in which the applicant was present, and the same was found to be packed in multiple bags. The panchnama clearly records the nature and description of the contraband as containing

both flowering tops and leaves, which form part of the cannabis plant within the meaning of Section 2(iii)(b) of the NDPS Act. The compliance of statutory mandates, including the safeguards under Section 50 of the NDPS Act, appears to have been duly followed during the course of the search and seizure operation.

9. Further, the chemical analysis report issued by the Forensic Science Laboratory confirms that the substance seized has tested positive for ganja. All 22 samples drawn from the 11 seized bags have been certified to contain ganja. This reinforces the prosecution's case, at least at this stage, and lends credence to the allegations that the applicant was in possession of the said contraband with conscious knowledge.

10. The concept of "conscious possession" under the NDPS Act does not require direct physical handling of the contraband at all times but includes knowledge and control over the substance. In the present case, considering the nature of the recovery, its volume, and the circumstances in which the applicant was apprehended, a strong prima facie case emerges to suggest that the applicant was in conscious possession of the commercial quantity of ganja.

11. In view of the above, the recovery made from the possession of the applicant, the description of the seized material in the panchnama and FIR, and the positive FSL report, all taken together, prima facie establish the applicant's involvement in the alleged offence. The procedural compliance at the time of seizure also appears to have been duly made. Therefore, at this stage,

there is no reason to disbelieve the version put forth by the prosecution, and the applicant has not been able to make out a case for bail within the parameters of Section 37 of the NDPS Act.

12. Moreover, the seizure is of commercial quantity, and thus, the bar under Section 37 of the NDPS Act gets attracted. The applicant has not been able to demonstrate any material to satisfy the Court that he is not guilty of the offence or that he will not commit any offence while on bail. The observations made in *Mohd. Muslim (supra)*, though relevant in cases of long incarceration, have been made in the peculiar facts of that case where the delay was not attributable to the accused. In the present case, considering the gravity of the offence, the magnitude of contraband seized, and the involvement of other accused as part of a larger conspiracy, no such indulgence can be extended at this stage.

13. In view of the above discussion, this Court finds no merit in the present bail application. Hence, the application deserves to be rejected.

14. The bail application is rejected.

(AMIT BORKAR, J.)