

Nikita

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

BAIL APPLICATION NO.4725 OF 2024

Jishan Ahmed Nafees Ahmad

... Applicant

V/s.

The State of Maharashtra

... Respondent

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Ms. Savvy Kolhekar, i/b Mr. Aniket Vagal for the Applicant.

Mr. Vinod Chate, APP for the State.

Mr. Dnyaneshwar Thorat, API, Malegaon City Police Station, Nashik.

CORAM : ASHWIN D. BHOBE, J.

DATED : 24th JUNE, 2025

P.C.:

1. Heard Ms. Savvy Kolhekar, learned Advocate for the Applicant. Mr. Vinod Chate, learned APP for the State.
2. By the present application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, Applicant is seeking bail in connection with C. R. No. 195 of 2024 registered with Malegaon City Police Station, Nashik for the offences punishable under Sections 8(C), 20(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short).
3. Case of the prosecution is that the raiding party conducted a raid in a building and seized 1.9 kg of Ganja from the Applicant. On the basis of the said recovery of contraband from the

possession of the Applicant, the above said crime was registered.

4. Applicant was arrested on 02.07.2024, since then the Applicant is in custody.

5. Ms. Savvy Kolhekar, learned Advocate for the Applicant states that the aforesaid C. R. No. 195 of 2024 is now registered as Special (NDPS) Case No.126 of 2024 and is pending on the file of Special Judge Malegav. Bail Application at Exhibit-6 was dismissed by the learned Special Judge on 25.09.2024.

6. Ms. Savvy Kolhekar learned Advocate for the Applicant submits that the contraband which is alleged to have been recovered from the Applicant is not Ganja within the definition under Section 2(iii) (b) and (c) of the NDPS Act. She submits that leaves, seeds, stems and stalks are excluded from the definition of Ganja. She submits that the contraband which is subject matter of the crime is not commercial quantity. She submits that the investigation papers do not show separation of the seeds, leaves, and stalks being segregated and thereafter weighed. She further submits that mandatory provision of Section 52-A of NDPS Act, is not followed, as according to her, the samples were drawn at the spot.

7. Mr. Vinod Chate, learned APP for the State, submits that the raiding party has complied with all the mandatory requirements of the provisions of the NDPS Act. He submits that the Applicant has four antecedents pertaining of offences under Indian Penal Code, 1960. He submits that the recovery made from the Applicant is a intermediate quantity.

8. I have perused the record with the able assistance of learned Advocates for the parties.

9. Indisputably, the recovery of the contraband from the Applicant is not of commercial quantity. The rigours under Section 37 of the NDPS Act, is not attracted.

10. Section 2(iii)(b) and (c) of NDPS Act defines 'Ganja' as the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever, name they may be known or designated, and any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom. Inventory Panchanama (Page No. 106 of the paper book) makes a reference to leaves, seeds being found in the bag seized from the Applicant. There is no material at least prima facie placed on record that the seeds, leaves etc being excluded, segregated and weighed separately from the alleged contraband to measure the quantity of Ganja. Considering the material on record, it is prima facie difficult to accept that the alleged contraband seized from the Applicant would fall within the definition of Ganja under the NDPS Act. Investigation is said to be complete. Custody of the Applicant pending trial is not warranted.

11. In view of the above, the present Bail Application is allowed, on the following conditions:

- a) Applicant is directed to be released on bail in connection with C. R. No. 195 of 2024 registered with Malegaon City Police Station, Nashik on his furnishing PR

bond in the sum of Rs.50,000/- with one or two local sureties in the like amount to the satisfaction of Additional Sessions Judge, Malegaon.

b) Applicant shall report to the Investigation Officer, Malegaon City Police Station once in a month on a first Saturday between 11.00 am to 1.00 pm till the conclusion of trial.

c) Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of the case so as to dissuade him from disclosing the facts to the Court or any police officer and should not tamper with evidence.

d) Applicant upon release, within 3 days shall furnish to the Investigation Officer, Investigation Officer, Malegaon City Police Station his residential address with proof and the contact number and to keep the Investigation Officer intimated about the change in the same from time to time.

e) Applicant shall not indulge himself in similar type of activities. On contravention of the said condition, bail granted to the Applicant would entail cancellation.

12. The Bail Application No.4725 of 2024 is disposed off.

(ASHWIN D. BHOBE. J.)