



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (BA) NO.53 OF 2025

(Aditya s/o Atmaram Salunkhe Vs. State of Maharashtra thr. Police Station Office,
Railway Police Station Badnera, Tah. & Dist. Amravati)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. T. U. Tahod, Advocate for Applicant.
Ms. T. H. Udeshi, APP for Non-Applicant/State.

CORAM: URMILA JOSHI PHALKE, J.

DATE: 21st APRIL, 2025.

1. The applicant came to be arrested on 17.08.2023 in connection with Crime No.243/2023 registered with Railway Police Station Badnera, District Amravati for the offence punishable under Section 20(b)(ii) (c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act').

2. The crime is registered on the basis of the report lodged by Harshal Keshavrao Chaple on an allegation that they have received the secret information that two persons have travelling by train and transporting the contraband articles *ganja* was weighing 49 kg. immediately along with the raiding party present and they are intercepted and two persons including the present applicant was found. During their search of the bag, the contraband articles *ganja* i.e. leaves were seized by obtaining the

necessary procedure. As per the allegations and after following the mandatory provisions they were arrested and the entire contraband articles are seized. After completion of the investigation the charge-sheet is already filed and the inventory is also carried out in presence of the *panchas*.

3. The present application is filed by the applicant on the ground that merely on suspicious the present applicant is arrested. In fact the description mentioned in the spot *panchnama* as well as seizure memo nowhere discloses that it is a contraband *ganja* as against only mentioned that the green leaves were found in the bags it was not accompanied with the fruiting or flowering tops. Thus the leaves are not within the definition of *ganja* given under the provisions of NDPS Act. Moreover, though the CA report shows that it was accompanied with the flowering or fruiting tops it was not segregated and not weight with after the segregation. Therefore, the applicant has made out the case as rigour under Section 37 will not attract, and therefore, he be released on bail.

4. Learned APP strongly opposed for the same and submitted that though the description in the spot *panchanma* and seizure memo is mentioned as green leaves but the CA report discloses were accompanied with flowering or fruiting tops and the commercial quantity is seized from the present applicant. The CA report supports that the contraband articles seized were *ganja* therefore, the rigour under Section 37 of the NDPS Act will attract, and

therefore, the application deserves to be rejected.

5. After hearing the learned counsel for the applicant and the learned APP for the State, perused the investigation papers from which it reveals that the informant and the present applicant and other co-accused were travelling by the train and transporting the contraband articles. The contraband articles seized from him and which was also forwarded for the inventory.

6. There is no dispute that commercial quantity in relation to the NDPS Act for '*ganja*' means any quantity greater than 20 kg. The Section 2(iii)(b) and (c) 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.

7. Thus, the definition of term *ganja* defines and clarifies that *ganja* is the flowering or fruiting tops of the cannabis plant excluding the seeds and leaves when not accompanied by the tops.

8. The above state of affairs would make it clear that there is nothing on record to *prima facie* shows that before carrying weight of the seized plant of *ganja*, the Investigating Officer either segregated the same or the leaves were accompanied with flowering or fruiting tops of

cannabis plants in order to ascertain the exact quantity of *ganja*. In fact, there is no mention in the inventory report that the sealed substance including the flowering or fruiting tops of the cannabis plants. This fact becomes further clear from the *panchnama* also. The seizure *panchnama* also nowhere shows that the flowering or fruiting tops of the cannabis plants accompanied with the leaves and the same were segregated in order to ascertain the correct quantity of *ganja*. Thus, on perusal of the material on record shows that what was seized was plant and there was no quantification of flowering tops without separating the flowering or fruiting tops, the *ganja* was weighed.

9. Thus, the contraband article which is seized in the present case, appears to be only leaves which are not included in the definition of *ganja*. As far as the CA report was concerned, which is already received. At this stage, considering the entire investigation papers which nowhere shows that the seizure *panchnama* and inventory report wherein the flowering or fruiting tops were segregated and thereafter which is vague. Thus, considering that except the green leaves there was no flowering or fruiting tops which appears from the investigation papers therefore, rigour under Section 37 of the NDPS Act will not be attracted. In view of that the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.

- (ii) The applicant – Aditya s/o Atmaram Salunkhe shall be released on bail in connection with Crime No.243/2023 registered with Railway Police Station, Badnera, District Amravati for the offence punishable under Section 20(b)(ii)(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on executing P.R. Bond in the sum of Rs.1,00,000/- with one solvent surety in the like amount.
- (iii) The applicant shall attend the concerned police station twice in a month on 1st and 15th of every month and the Investigating Officer shall record his presence.
- (iv) The applicant shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.
- (v) The applicant shall also attend the Police Station at Vile Parle, Mumbai once in a week i.e. on Monday between 10:00 a.m. to 01:00 p.m. till the completion of the trial.
- (vi) The applicant shall not leave the jurisdiction of Commissioner of Police, Mumbai without prior permission of the

District Court or Special Court, Nagpur.

(vii) Registration of the single offence against the applicant would lead to the cancellation of bail.

(viii) The trial court shall not be influenced of the observation of this Court which is only in respect of the bail.

10. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)