



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

CRIMINAL APPLICATION (BA) NO.323 OF 2025
(Satish Deenanath Upadhyay Vs. The State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.S. Manohar, Advocate for the applicant.
Mr. Swati Kolhe, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- APRIL 8, 2025.

By this application, the applicant is seeking bail as he came to be arrested on 18/10/2024 in connection with Crime No.290/2024 registered with Police Station Ram Nagar, Gondia, District Gondia for the offences punishable under Sections 8(c), 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "NDPS Act").

2. The crime is registered on the basis of report lodged by the Police Inspector Vanita Saykar on an allegation that on 17/10/2024 when they were on patrolling duty they found two persons in a suspicious condition holding bags in their hands, therefore, they were intervened and during interrogation as well as search of the bags it revealed that they are carrying the contraband articles like "Ganja". In presence of the panchas, the contraband articles were seized and on weighing the said contraband articles it was total

28.125kg. including leaves, flowering and fruiting tops. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that the applicant is arrested merely on suspicion. Moreover, the description mentioned in the inventory report does not cover under the definition of “Ganja”. The flowering and fruiting tops are not segregated and without segregating the same, the contraband articles are weighed. If it would have been segregated definitely it was not a commercial quantity. He further invited my attention towards the inventory report and pointed out the inconsistencies between the FIR and the inventory report by submitting that the inventory report nowhere shows that the said contraband articles were consist of the flowering and fruiting tops. It only mentions about the wet green leaves. He further invited my attention towards the statements of the police witnesses who also nowhere stated the said contraband articles seized was including flowering and fruiting tops. The only CA report shows that it contains flowering and fruiting tops. Thus, he submitted that in view of the definition of term ‘Ganja’ the contraband articles which are seized is not within such definition. Moreover, it is not segregated, and therefore, the contention of the prosecution that it was the commercial quantity cannot be accepted. He further submitted that the entire contraband articles are not

produced before the Magistrate and entire contraband materials were seized and two packets were prepared and only one packet bearing S-1 was referred to the CA. Thus, considering the inconsistencies in the investigation, the bar under Section 37 will not attract. In view of that, the applicant be released on bail. In support of his contention he placed reliance on Mohd. Jakir Nawab Ali v. State of Maharashtra, [2024 SCC OnLine Bom 3198] and Ibrahim Khwaja Miya Sayyed @ Raju Vs The State of Maharashtra [2023 SCC Online Bom 3873].

4. *Per contra*, learned APP strongly opposed the application on the ground that commercial quantity was found along with the accused. The forensic report reveals that flowering and fruiting tops, seeds, leaves and stalks were received in a sealed packet marked as Exhibit 'S-1'. The report reveals that the contraband articles which was recovered from the applicant is "Ganja" within the meaning of Section 2(iii)(b) of the NDPS Act. Thus, the applicant was found in possession of the said contraband, and therefore, the application deserves to be rejected.

5. I have heard learned Counsel for both the sides. On perusal of the investigation papers it reveals that as per the recitals of the FIR two trolley bags and one hand bag was found in possession of the present applicant and the other co-accused. On interception of the said bags three packets were found which were mixed together and

collected in two packets S-1 and S-2. The said contraband was described in the FIR as the greenish wet leaves, flowering and fruiting tops, seeds and stalks. The said packets were forwarded to the Magistrate for the inventory. The inventory report nowhere shows that said packets contained the contraband material flowering and fruiting tops. It only mentions that Seal of seized plastic bag marked as A-1 is opened and found wet leaves of greenish colour having strong smell in it. According to the investigating officer it is Ganja. As to the another packet A-2, the similar description is mentioned by the Magistrate and thereafter it is weighed and the total weight is 28.125 kgs. The statements of the witnesses also discloses that the contraband article was Ganja and not described whether it includes the fruiting or flowering tops. Only the CA report shows that it includes the flowering and fruiting tops. Moreover, the CA report also discloses that only one packet S-1 was received by them for the analysis.

6. 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. In the case in hand, as seen from the FIR and the investigation papers, the quantity though shown as 28.125 kg seized from the possession of the present applicant and other co-accused. However, the inventory certificate as well as the statements of the witnesses nowhere shows that the seized articles includes

seeds and flowering and fruiting tops. It appears that when it was weighed it was not segregated by the investigating officer and after segregating it was not weighed.

7. The above state of affairs would make it clear that there is nothing on record to *prima facie* show that before carrying weight of the seized ganja, the investigating officer had segregated the parts of the said ganja and measured the exact quantity of ganja. In fact, none of the paper mentions that the said contraband articles which were seized includes the flowering or fruiting tops of cannabis plant. This fact becomes further clear from the inventory report and the statements of the witnesses. The inventory report and the statements of the witnesses nowhere shows that the flowering or fruiting tops of cannabis plant were accompanied with the leaves.

8. In view of Section 37 of the NDPS Act, the power to release an accused on bail subject to the limitation contained in Section 439 of the Cr.P.C. coupled with the limitation contemplated in view of Section 37 itself, mainly (1) there are reasonable ground for releasing that accused is not guilty of such offence, (2) that he is not likely to commit such offence while on bail. The expression reasonable ground means something more than *prima facie* ground it contemplates substantial probable cause for believing that the accused is not guilty of the offence.

9. The record also indicates that the investigating agency has not drawn samples independently from both the bags but had mixed together the entire contraband in both the bags and thereafter drawn two samples one of which was forwarded to the forensic lab for analysis.

10. Learned Counsel placed reliance on the decision of this Court at Principal Seat in the case of Ibrahim Khwaja Miya Sayyed @ Raju Vs The State of Maharashtra (supra) wherein by referring the decisions of the Delhi High Court in Amani Fidel Chris vs. Narcotics Control Bureau in Criminal Appeal No.1027 of 2015 and Ram Bharose vs. State (Govt. of NCT of Delhi) in Bail Application No.1623 of 2022 has considered the Standing Order 1 of 88, which is pari material with Standing Order 1 of 89 and has held that “Mixing of the contents of container/package (in one lot) and then drawing the representative samples is not permissible under the Standing Orders and rightly so since such a sample would seized to be a representative sample of the corresponding container/package”.

11. Thus after perusal of the investigating papers, *prima facie*, the material complied with the charge sheet, it is difficult to accept that the alleged prohibited substance is within the definition of ganja under the NDPS Act. Moreover, it is not segregated and after segregation it

was not weighed. Moreover, the description which is mentioned in the inventory report does not cover under the definition of “Ganja”. Thus, considering all these reasons the applicant has made out a case for grant of bail. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) The applicant – Satish Deenanath Upadhyay in connection with Crime No.290/2024 registered with Police Station Ram Nagar, Gondia, District Gondia for the offences punishable under Sections 8(c), 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, be released on bail on executing PR. Bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned Police Station once in a month i.e. first Saturday of every month between 11.00 AM to 1.00 PM.

(iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case either personally or by way of electronic media.

(v) The applicant shall attend the proceedings before the Sessions Court without seeking any exemption unless there are exceptional circumstances.

(vi) The applicant shall not indulge himself in similar type of activities.

(vii) The applicant shall furnish the local surety for the satisfaction of the Court.

12. The contravention of any of the condition would lead to the cancellation of bail.

13. The trial Court shall not be influenced by the observations of this Court, which is only for the purpose of the bail.

14. The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*