



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

CRIMINAL APPLICATION (BA) NO. 371 OF 2025

Amitikumar Dwarkaprasad Mishra and another
Vs.
State of Maharashtra, through Police Station Officer, Police Station,
Railway, Nagpur

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

Court's or Judge's orders

Mr, D. S. Kanwale, Counsel for the applicants.
Ms. Sneha Dhote, APP for non-applicant / State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 17/04/2025

1. The present application is moved by the applicants under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (439 of the Cr.P.C.) in respect of Crime No.795 of 2024, registered at Railway Police Station Nagpur for the offences punishable under Sections 20(b)(ii)(c) read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "NDPS Act").

2. As per the allegation the complainant Panjabrao Sahebrao Dole, Police Sub-Inspector posted at Railway Police Station Itwari, Nagpur had received an information that some persons are transporting contraband articles ganja. Therefore, police constable namely Saurabh Yadav along with other police constables searching the passengers and at around 16.05 hours at platform No.1 towards

Mumbai end in open waiting room four suspect persons possessing 4 sag-bags were intercepting and on search of the khaki colour bags the contraband articles have seized. The investigating officer has also collected the C.C.T.V. footage of the same. After following due process and after completion of the investigation charge-sheet is submitted against the present applicants and other co-accused under Section 299 of the Code of Criminal Procedure.

3. Heard learned Counsel for applicants, who submitted that the present applicants were allegedly found in possession of commercial quantity. Even accepting the case of the prosecution he submitted that in fact the applicants were not found in possession of the said contraband article. His possession is not established by the prosecution. He also invited my attention towards the First Information Report and the seizure panchanama as well as inventory report and submitted that none of these documents describes the contraband article as the flowering or fruiting tops of the cannabis plant. It only describes that leaves with seeds which is not included in the definition of 'ganja'. He submitted that now prosecution has only placed reliance on the CA report. But in absence of the description in the First Information Report and the inventory report that CA reports cannot be taken into consideration. In support of his contention, he placed reliance on various orders passed by this Court including

Criminal Application (BA) No.602/2024 (Mohammad Jakir Nawab Ali Vs. The State of Maharashtra thr. PSO, PS Sonala Dist. Buldhana) decided on 20.09.2024, Criminal Application BA No.101/2023 (Praveen Supda Chavan and another Vs. State of Maharashtra, thr. its PS Risod, District Washim) decided on 23.06.2023 and on so. He submitted that as description which is mentioned in the First Information Report and seizure panchanama are not as per the definition of Ganja, and therefore, the applicants deserves to be released on bail. He further submitted that the other co-accused on the similar conditions released on bail.

4. Per contra, learned APP for the State strongly opposed the said application and submitted that entire composite quantity is to be taken into consideration which is a commercial quantity and therefore, rigor under Section 37 of the N.D.P.S. Act will apply. She further invited my attention towards CA report and submitted that being it is the expert opinion to be taken into consideration which clearly established the contraband article seized was a ganja and C.C.T.V. footage as well as CVR reports discloses connection between present applicants with other co-accused. Considering all these material, the application deserves to be rejected.

5. After hearing both the sides and on perusal of the investigation papers, it reveals that four

persons were intercepting by the investigating agency and from them the contraband articles are seized. There is no dispute that commercial quantity in relation to NDPS Act for 'ganja' means any quantity greater than 20 kg. In the present case total contraband articles seized from the present applicants and other co-accused is 31.770 kg which is a commercial quantity. The issue raised by the present applicants is that description of the contraband article which is mentioned in the seizure report and even in the inventory report only the green leaves along with seeds is mentioned. Considering the said submission it is necessary to consider the definition of 'Ganja'. The Section 2(iii) (b) and (c) defines the '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.

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 of 31.770 kg. of ganja was seized from the possession of the present applicants and other co-accused. However, the

seizure panchanam, First Information Report and requisition letter or the inventory no where the description of the ganja is mentioned as the leaves along with flowering or fruiting tops. All these documents show that the seized articles were seeds and leaves. It appears that when the said contraband article was mentioned at the relevant time there is no description mentioned as to the said article which is found in possession of the present applicants and other co-accused.

7. The above state of affairs would make it clear that there is nothing on record to prima facie show that before carrying weights of the seized ganja, the investigating officer had segregated the flowering or fruiting tops and thereafter measure it to ascertain the exact quantity of ganja. In fact, the seizure panchanama nowhere shows that there were flowering or fruiting tops along with the leaves. Therefore, the contention of the learned Counsel for the applicants and considering the decision at the Principal Seat in **Criminal Application No.2173 of 2022 in the case of (Kunal Datt Kadu Vs Union of India /State of Maharashtra) decided on 29.08.2022** wherein this aspect is considered by this Court which is clearly applicable to this case.

8. This Court has considered the definition of Ganja as well as the observation of the Hon'ble Apex Court that as far as the rigor under Section 37 of the N.D.P.S. Act is concerned. Here also similarly the CA

report has also mentioned the sample under the reference has tested positive for ganja. However, for the first time in ganja the green leaves in substance which was found and drawn in the course of analysis referred to the sample and except the CA reports there is no document on record that the seized contraband was having fruiting or flowering tops around with the leaves. The NDPS Act defines Ganja under Section 2(iii)(b)(c) which is referred above.

9. From the above discussion it can be seen that ganja is flowering or fruiting tops of the cannabis plant and when the flowering or fruiting tops are not accompanied, the seeds and leaves are to be excluded. It is significant to note that the definition of 'ganja' under NDPS Act took place in its ambit only the flowering or fruiting tops of cannabis plant and excluded the seeds and leaves when not accompanied by the tops. Thus, the definition of 'ganja' is restricted and it does not include the seeds and leaves of ganja plant. The panchanama and seizure do not reflect presence of flowering or fruiting tops on the plant. Fruiting tops in the mixture which is seized. In view of that, the applicants have made out a case for grant of bail. Accordingly, I proceed to pass the following order.

ORDER

i) The application is allowed.

ii) The applicant **No.(1) Amitikumar Dwarkaprasad Mishra and No.(2)**

Bharatendra Singh Rajendra Singh, be released on bail in connection with Crime No.795/2024, registered at Police Station Nagpur Railway, District Nagpur, for the offences punishable under Sections 20(b)(ii)(c) read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 on executing PR bond of Rs.50,000/- each with one surety in the like amount.

iii) The applicants shall attend to the concerned Police Station twice in a month on 1st and 15th of every month between 11.00 a.m. to 1.00 p.m till completion of trial.

iv) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the present case.

v) The applicants shall not indulge himself in similar type of activities. On contravention of the above said condition, the bail granted to the present applicants deserves to be cancelled.

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

vii) The applicants shall attend the proceeding before the Special Court without seeking any exemption unless there are exceptional circumstances.

10. The present application is disposed of.

(URMILA JOSHI-PHALKE, J.)