



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

**CRIMINAL APPLICATION (BA) NO.441 OF 2025**

Bansing Kisan Rathod

Vs.

State of Maharashtra, through Police Station Officer, Pusad Gramin,  
District Yavatmal

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

Court's or Judge's orders

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Mr. S. S. Sheikh, Counsel for the applicant.

Mr. A. J. Gohokar, APP for non-applicant/State.

**CORAM : URMILA JOSHI-PHALKE, J.**

**DATED : 17/06/2025**

1. The present application is moved by the applicant under Section 483 of the Bharatiya Nyaya Sanhita, 2023 in respect of Crime No.854/2024, registered at Police Station Pusad Gramin, District Yavatmal for the offences punishable under Section 20, 8(c), 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "NDPS Act"), the applicant is arrested on 03.11.2024.

2. The crime was registered on the basis of the report lodged by Kailas Vitthalrao Sasane serving as a Police Officer on an allegation that he received the secret information that the present applicant has cultivated cannabis in his agricultural land and he himself was acting as a watchman. On the basis of the said information, the informant along with other

raiding party members in presence of the Gazetted officer visited the village of the present applicant and also conducted the raid in Survey No.8/3 admeanting 1 H 20 R. After issuing the relevant notice under Section 50 and after compliance under Section 42 of the NDPS Act, 71 trees of cannabis were seized by the Investigating agency. The total weight of cannabis leaves, fruit, tops and stems were 34.751 Kg. As the commercial quantity was recovered from the agricultural field of the present applicant, he was arrested. After completion of the investigation, the charge-sheet is submitted.

3. Heard learned Counsel for the applicant, who submitted that neither the first information report nor the spot panchanma discloses the description of the contraband ganja as per the definition given under Section 2(i)(b) of the NDPS Act. He submitted that the entire contraband articles along with the stems, leaves, seeds are weighed altogether without segregating the same. Thus, the contraband articles is not weighed after segregating the same. In fact, the stems and leaves are not within the definition of ganja. Therefore, the rigour under Section 37 will not attract and the applicant shall be released on bail.

4. Learned APP strongly opposed for the same on the ground that the CA report discloses the contraband articles which was forwarded as Ganja,

which is sufficient to show that the contraband articles which is seized, is within the definition of Ganja. As far as the mandatory provisions are concerned, which are followed by the investigating agency. Now CA reports are received and trial can be commenced at any stage, in view of that the application deserves to be rejected.

5. There is no dispute that commercial quantity in relation to 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.

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 34.751 kg. of ganja was seized from the agricultural field of the present applicant. The inventory certificate as well as the recitals of the FIR, the panchnama shows that the seized articles were leaves, seeds, stems and stalks. It appears that when the stalk was uprooted from the

agricultural field it was not segregated and it was not weighed by segregating the same. In fact, the contraband articles was weighed along with the gunny bag without segregating the stems, the leaves and the fruiting tops.

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 plant of ganja, the investigating officer had segregated the seeds or the other parts of the plant in order to ascertain 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 panchanama also. The seizure panchanama only mentions as leaves, stems, stalks and 'fruiting tops'. There is no mentioned as to the flowering tops. Thus, on perusal of the material on record shows that what was seized was without segregating fruiting tops from the leaves, stems and stalks. As the seized material was not weighed and after segregating the leaves and the other parts and moreover it is not along with the flowering tops. Therefore, it is difficult to ascertain whether quantity can be said to be commercial.

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.

(Section 483 of BNS) 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. It is significant to note that the definition of 'ganja' under NDPS Act takes in its ambit only the flowering or fruiting tops of cannabis plant and excludes 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. Another aspects of the matter is whether the applicant could be said to have been charged for dealing in commercial quantity of the contraband articles. The inventory certificate mentions of the plant of ganja, along with leaves, stems and stalks and nowhere express whether it is accompanied with the flowering or fruiting tops. If at all the seeds and other parts were to be counted as fruiting part, it ought to have been excluded and weighed separately to measure the quantity of ganja.

10. Thus after perusal of the investigating papers, *prima facie*, the material complied with the chargesheet, it is difficult to accept that the alleged prohibited substance is within the definition of ganja under the NDPS Act. Since the only flowering or fruiting tops of cannabis plants are classified as ganja, in absence of the said substance being seized from the applicant, *prima facie* involvement of the applicant is difficult to hold. 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 **Bansing Kisan Rathod** shall be released on bail, in connection with Crime No.854/2024, registered at Police Station Pusad Gramin, District Yavatmal for the offences punishable under Section 20, 8(c), 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, on executing PR bond of Rs.1,00,000/- with one surety in the like amount.
- (iii) The applicant shall report to the concerned Police Station once in a month on first Saturday between 11.00 a.m. to 1.00 p.m., till culmination of the trial.
- (iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the present case.

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

The application is disposed of.

**(URMILA JOSHI-PHALKE, J.)**