



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

CRIMINAL APPLICATION (BA) NO.568 OF 2025

Shabbir s/o Jumme Khan and another
Vs.

State of Maharashtra, through Police Station Officer, Police Station, Bori,
Nagpur (Rural)

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

Court's or Judge's orders

Ms. Surabhi Godbole (Naidu), Counsel for the applicants.
Mr. Ganesh Umale, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 01/07/2025

1. By this application, the applicant is seeking bail as he came to be arrested on 12.01.2024 in connection with Crime No.15/2024 registered with Police Station Bori, District Nagpur for the offences punishable under Sections 20, 22, 29, 25 and 27A 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 Sub Inspector Battulal Pande, who alleged that he received the secret information, when he was on patrolling duty on 11.01.2024 and a Container proceeding from Chandrapur to Nagpur was intercepted bearing No. HR-55-S-2346, transporting the ganja.

3. He immediately communicated the said information by taking an entry to higher Authorities. On interception of the truck, the present applicants who are driver and cleaner respectively were arrested. From the said vehicle, the plastic bags containing contraband weighing 495.600 Kg. was recovered. After following the mandatory provisions, the applicants were arrested and the investigation was carried out.

4. Heard learned Counsel for the applicants, who submitted that neither the first information report nor the spot panchnama or the seizure panchnama or the inventory discloses the description of the contraband articles which was seized. The CA reports shows that the contraband articles which was forwarded was along with the leaves and stalks which is not within the definition of the ganja. She further submitted that the flowering and fruiting tops are not segregated before weighing the same, if it would have been segregated, then there would not have been a commercial quantity. She submitted that as the definition of ganja does not included leaves and stalks and it is not segregated, therefore, the bar under Section 37 of the NDPS Act will not attract. In support of her contention she placed reliance on the decision in the case of **Satish Deenanath Upadhyay Vs. The State of Maharashtra** reported in **Law Finder Doc. Id#2722258** and **Vandeo Shamrao Dhakare Vs. State of Maharashtra**

reported in **Law Finder Doc. Id#2686664** wherein this Court has considered that seized contraband articles were not segregated and weighed separately to determine the commercial quantity as per the definition of ganja under the said act and prays for release the applicant on bail.

5. 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 and therefore, it is within the definition of ganja. In view of that, bar under Section 37 of the NDPS Act will attract and therefore, the application deserves to be rejected.

6. I have heard learned Counsel for both the sides. On perusal of the investigation papers it reveals that on interception of the vehicle on the basis of a secret information bearing No.HR-55-S-2346, the ganja weighing 495.600 Kg i.e. commercial quantity was seized from the said vehicle. The applicants being the driver and the cleaner were arrested. On perusal of the first information report, the seizure panchanama and the inventory report it reveals that none of these documents discloses the description of the ganja which was seized from the present applicants. It only describes "wet ganja" [ओलसर गांजा]. Only the CA report shows that it

includes the flowering and fruiting tops. Moreover, the CA report also discloses that it is along with the stalks.

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. In the case in hand, as seen from the FIR and the investigation papers, though quantity is shown as 495.600 kg. seized from the possession of the present applicants. However, the inventory certificate as well as the seizure panchnama and the first information report, shows that the seized articles only describes as wet ganja. It appears that when it was weighed it was not segregated by the Investigating Officer and after segregating it was not weighed.

8. 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.

9. 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.

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

11. In the case of **Ibrahim Khwaja Miya Sayyed @ Raju Vs. The State of Maharashtra [2023 SCC Online Bom 3873]** 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".

12. 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 applicants has 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) Shabbir s/o Jumme Khan and No.(2) Munnawar s/o Ajad Khan** shall be released on bail in connection with Crime No.15/2024 registered with Police Station Bori, District Nagpur for the offences punishable under Sections 20, 22, 29, 25 and 27A of the Narcotic Drugs and Psychotropic Substances Act,

1985, on executing P.R. Bond in the sum of Rs.1,00,000/- each with one solvent surety in the like amount.

(iii) The applicants 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 applicants 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 applicants shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.

(vi) The applicants shall not indulge themselves in similar type of activities. A single registration of crime would lead to the cancellation of bail.

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

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

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

15. The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)