



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

CRIMINAL APPLICATION (BA) NO. 687 OF 2025

Shiva s/o Lalit Dubey Vs 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. D.S. Kanwale, counsel for applicant.

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

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 21/07/2025.

1. The present application is moved by the applicant under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023, in connection with Crime No. 635/2024 registered at Railway Police Station, Nagpur for the offence punishable under Section 2-B(ii) (c), and Section 29 of Narcotic Drugs and Psychotropic Substances Act, 1985(hereinafter referred to as "NDPS Act").

2. The crime is registered on the basis of a report lodged by Railway Police Officer, Priyanka Singh, on an allegation that on receipt of the secret information, they conducted a raid at Nagpur Railway Station at about 1.40 p.m. and saw some suspected persons roaming on the platform along with the bags. On intercepting them, two persons were found along with the bag, and the present applicant was seen in the CCTV footage. Thereafter, all the persons were taken

into custody, and on inquiry with them, it was revealed that the other co-accused as well as the present applicant were carrying the contraband article, Ganja, in a commercial quantity, and total 11 bags were seized by the investigating agency. Each bag was weighed, and thereafter, the weight was noted down by the investigating agency. The total contraband articles seized was of 108.65 Kg, which was seized by obtaining the sample from it. After completion of the preliminary investigation, the crime was registered against the present applicant and the other co-accused.

3. Heard learned counsel for the applicant, who submitted that as far as the present applicant is concerned, he was not found along with the bag. Merely on suspicion, he was arrested. He further submitted that the description mentioned in the FIR and the seizure panchanama is only to the extent of green leaves. It is nowhere mentioned that it was along with the flooring or the fruiting tops. Moreover, it is not segregated, and the inventory report nowhere discloses that the leaves were along with the fruiting or flowering tops. Thus, the contraband articles which is seized is not within the definition of Ganja. Moreover, the applicant was not found in exclusive possession of the said contraband. In view of that, no prima-facie material is there to attract the bar under Section 37 of the NDPS Act, and therefore, the applicant be released on bail.

4. Learned APP strongly opposed the said application on the ground that the applicant was traced in the CCTV footage. On inquiry with the accused, he has accepted the ownership of the said bag from the possession of the present applicant as well as the other co-accused. The huge quantity of ganja was seized, in view of that, bar under Section 37 will attract, and therefore, the application deserves to be rejected. He also invited my attention towards the CA report and submitted that, the CA report discloses that leaves were along with the fruiting and flowering tops, and therefore, the contention of the learned counsel for the applicant deserves to be rejected.

5. On hearing both sides and on perusal of the investigation papers, as far as the FIR and the seizure panchanama are concerned, which show that two accused persons were found along with the bags, they are Yogesh Prasad and Rajesh Yadav. From them, the bags were seized, and on seizure of the bags, the contraband article was found in the said bag. Thereafter, from them, the involvement of the present applicant is also revealed, and the present applicant was also found at the railway station by observing him in the CCTV footage. Thereafter, he was inquired about, and he accepted the ownership of the said bag. As far as the description of the Ganja is concerned, it is only mentioned in the FIR that it has black coloured leaves

and seeds. The inventory report nowhere mentioned that it was along with the flooring and fruiting tops. The CA reports that were perused show the contraband articles seized along with the stocks, seeds, flooring tops, and fruiting tops. Thus, the first time the CA report discloses that it was along with the flooring or fruiting tops.

6. The contention of the learned counsel for the applicant is that if the flooring tops would have been segregated, definitely the applicant would not have been found in possession of the commercial quantity, even if it is accepted that he was the owner of the said bag. In fact, the conscious possession of the said bag with the present applicant itself is not established from the investigation papers.

7. He invited my attention towards the definition of Ganja given under Section 2(iii)(b)(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.

8. 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.

9. In the case in hand, as seen from the FIR and the investigation papers, the quantity of 108.65 of Ganja was seized from all the accused. The certificate of inventory was obtained by the investigating officer it nowhere discloses that it was having fruiting or flowering tops. It only mentions it was a ganja. All the bags are opened and weighed, and the flooring or fruiting tops are not mentioned in the inventory report. It also not mentioned it was segregated before weighing the same.

10. The above state of affairs would make it clear that there is nothing on record to prima-facie show that before carrying the weight of the seized plant of ganja, the Investigating Officer has segregated the flowering or fruiting tops of the cannabis plant in order to ascertain the exact quantity of ganja. It further reveals from the CA report also as the contraband, which was analyzed by the chemical analyzer, shows that it was along with stocks, leaves, seeds, etc. In fact, there is no mention in the inventory report of the seeds, the substance includes, the flooring, or the fruiting tops of the cannabis plants. This fact becomes further clear from the panchanama also. The seizure panchanama also nowhere shows that it was along with the flooring or fruiting tops of the cannabis plant. In any other manner,

separated in order to ascertain the correct quantity of ganja.

11. Thus, on perusal of the material on record shows that what was seized was the leaves and there was no quantification of flowering tops and without separating the flowering or fruiting tops, the ganja was weighed. As the seized material was not weighed after separating the flowering tops and therefore it is difficult to ascertain whether quantity can be said to be commercial. Therefore, the rigor under Section 37 of NDPS Act is not attracted. The power to release the accused on bail subject to the limitation is not applicable here.

12. The learned Counsel rightly placed reliance on the decision of this Court in Criminal Application (BA) No. 150/2024, wherein by referring the earlier order of this Court passed in principle bench in *Criminal Application (BA) No. 101/2023 (Parveen Supra Chavan and another Vs State of Maharashtra) decided on 23/06/2023, Bail Application No. 291/2023 (Imtiyaz Sattar Shaikh Vs state of Maharashtra) decided on 1st November, 2023*, wherein similar set of facts considering the quantity which is seized is not commercial quantity released the applicant on bail. In view of that, the present application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order.

ORDER

- a] The application is **allowed**.
- b] The applicant- *Shiva s/o Lalit Dubey*, shall be released on bail in connection with Crime No. 635/2024 registered at Railway Police Station, Nagpur for the offence punishable under Section 2-B(ii) (c), and Section 29 of 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.
- c] The applicant shall report to the concerned police station once in a month on 1st Saturday between 11.00 a.m. to 1.00 p.m.
- d] 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.
- e] The applicant shall not indulge himself in similar type of the activities.
- f] A single registration of the offence would lead to the cancellation of bail.

- g] On contravention of any of the conditions on the bail granted to the present applicant deserves to be cancelled.
 - h] The trial court shall not be influenced by the observation of this court which is only for the purpose of the bail.
13. The application stands **disposed of**.

[URMILA JOSHI-PHALKE, J.]