



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

CRIMINAL APPLICATION (BA) No. 1142 OF 2024

Ghanshyam s/o Harichand Agrawal 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. A.S. Manohar, counsel for applicant.

Mr. C.A. Lokhande, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 26/02/2025.

1. The present application is moved by the applicant under Section 439 of Code of Criminal Procedure, 1973 (483 of the Bhartiya Nagrik Sureksha Sanhita, 2023) in respect of Crime No. 226/2021 registered with Police Station, Rawanwadi, Tahsil and District Gondia for the offence punishable under Sections 20 and 8 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act').

2. The crime is registered on the basis of a report lodged by Tejendra Marotrao Meshram, Police Station Rawanwadi Police Station, on an allegation that he received secret information that a person by the name of Ghanshyam Harichandra Agrawal, resident of Mouza Kamtha, has stored the Ganja unauthorizedly and illegally in his house, and he is likely to transport the same. He immediately obtained the search warrant, and along with the panchas and other raiding staff, raided the house of the

present applicant, and during the raid, he seized 29 kg of ganja from the house. Immediately the applicant as well as the said contraband articles are taken into possession in presence of the panchas. By following due procedure, the samples were obtained and forwarded to the Chemical Analyzer. It is further alleged that the contraband articles were also forwarded for the inventory. Accordingly, after completion of the investigation, the charge-sheet was submitted.

3. The earlier application was rejected, and the subsequent application is withdrawn, but liberty was granted to the present applicant to move by raising all the grounds.

4. Learned counsel for the applicant submitted that the description mentioned in the FIR as well as the Panchanama, even in the inventory shows that seized articles were only the leaves and the seeds, which is not covered under the definition of Ganja. He further submitted that it is not a Ganja within the definition of under Section 2(iii) (b) and (c) as the leaves, seeds, stems and stalks are excluded from the definition of Ganja. He further submitted that the requisition letter even address to the Chemical Analyzers also does not disclosed the description. Only the CA report shows that they have received the flowering and fruiting tops along with the leaves. He submitted that this aspect is considered by this Court at Principal Bench in the case of ***Kunal Dattu Kadu***

Vs Union of India [2022 SCC OnLine Bom 1770] wherein this Court has referred the decision of *Union of India Vs Shiv Shankar Keshari [(2007) 7 SCC 798]*, wherein it was held that the Court, while considering the application for bail with reference to Section 37 of the NDPS Act, is not called upon to record a finding of not guilty. It is for the limited purpose essentially to the question of releasing the accused on bail when the Court has called upon to see if there are reasonable grounds for believing that the accused is not guilty and record satisfaction about the existence of such grounds. But the Court has not to consider the matter as if it is pronounced in the Judgment of acquittal and recording the finding of not guilty.

5. He further invited my attention towards para-23, wherein this Court has considered that CA report has mentioned that the sample under reference has tested positive for Ganja. However, for the first time in contrast to the green leafy substance which was found and seized, from each samples were drawn, report of analysis refer to the sample which is in the form of soft greenish heterogeneous mixture flowering and fruiting tops, bits of leaves, stem and stalk along with seeds of plant and this was tested positive for Ganja. From the reading of aforesaid description, it can be seen that Ganja is flowering or fruiting tops of the cannabis plant when the flowering or fruiting tops are not accompanied, the seeds and leaves are to be excluded. Whether the substance is Ganja will have to be determined on facts of each case. In the present

case, if the complaint allege that the substance which was seized is green leafy substance, but there is no reference of the flowering and fruiting of tops and leafy substance indicating that it is a mixture of green leafy substance and it can only amount to Ganja, when it is accompanied with the flowering and fruiting tops.

6. He submitted that this decision is squarely applicable to the present case. Here also, except the CA report, nowhere description of the contraband article is described and therefore, the applicant has made out a case for grant of bail even though the rigor under Section 37 is not attracted, and therefore, the application deserves to be allowed.

7. Learned APP strongly opposed the said application and submitted that now trial is already commenced, seven witnesses have already been examined, and at this stage, if the accused is released on bail, there would be a hurdle in disposing of the case. In view of that, the application deserves to be rejected.

8. 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)(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.

9. 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.

10. In the case in hand, as seen from the FIR and the investigation papers, the quantity of 29 kg Ganja was seized from the house of the present applicant. However, the seizure panchanama, FIR, requisition letter, or the inventory, nowhere the description of the Ganja is mentioned as leaves along with the flowering tops or fruiting tops. All these documents show that the seized articles leaves and the seeds. It appears that when the said contraband article was measured. At the relevant time also, there is no description mentioned as to the contraband article which is found in possession of the present applicant.

11. 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 the Ganja, the investigating officer has segregated the flowering or fruiting tops, and thereafter it was forwarded to the Chemical Analyzer. In fact, the seizure panchanama nowhere shows that there were flowering or fruiting tops along with the leaves. Therefore, the contention of the learned of the applicant, the decision Kunnal Dattu Kadu

referred (supra) above, is squarely applicable to his case is sustainable.

12. This court has considered the definition of Ganja as well as the observation of the Hon'ble Apex Court as far as the rigor under Section 37 is concerned. Here also, similarly the CA report has mentioned that the sample under reference has tested positive for Ganja. However, for the first time in contrast to green leaves in substance, which was found were drawn report of analysis refer to the sample and except the C.A. report there is no document on record that the seized contraband was having fruiting or flowering tops along with the leaves. The NDPS Act define Ganja under Section 2(iii)(b) as under :- "Ganja, that is 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 which means that if the seeds and leaves are accompanied by the tops then the same can be termed as ganja."

13. From the reading of aforesaid description, 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.

14. 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. In view of that, applicant has made out a case for grant of bail.

15. Moreover, the applicant is behind bar 14/05/2021. The trial is yet not concluded. Therefore, the right of the accused of speedy trial is also affected. Recently, the Hon'ble Apex Court in the case of *Ankur Chaudhary Vs. State of Madhya Pradesh in Special Leave to Appeal (Crl.) No.4648/2024*, by referring the earlier decisions held that inordinate delay in trial is affecting the right of the accused of a speedy trial, which is violation of Article 21 of the Constitution of India. In view of that also, the applicant has made out a case for grant of bail. Accordingly, I proceed to pass the following order:

- a] The application is **allowed**.
- b] The applicant- ***Ghanshyam s/o Harichand Agrawal***, shall be released on bail, in Crime No. 226/2021 registered with Police Station, Rawanwadi, Tahsil and District Gondia for the offence punishable under Sections 20 and 8 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on executing PR bond of Rs.50,000/- with one surety in the like amount.

- c] The applicant shall attend the concerned Police Station once in a month on first Saturday between 11.00 a.m. to 1.00 p.m. till conclusion of the trial.
- d] The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the present case.
- e] The applicant shall not indulge himself in similar type of activities.
- f] On contravention of the above said condition, the bail granted to the present applicant deserves to be cancelled.
- g] The trial Court shall not be influenced by the observations of this Court, which is only for the purpose of the bail.
- h] The applicant shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.

16. The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]