



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO. 859 OF 2024

ANIL S/O DHUMA CHAVAN

Vrs.

THE 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

Shri N. B. Kalwaghe, Advocate for applicant.
Shri N. B. Jawade, A. P. P. for Non-applicant-State.

CORAM: URMILA JOSHI-PHALKE, J.
DATE : 07/03/2025.

1. The applicant came to be arrested on 13/12/2023 in connection with Crime No.400/2023 registered under Section 20 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 PSI Shri Sachin Kanade, Local Crime Branch on an allegation that on receipt of secret information, raid was effected and while conducting the raid, the applicant was found in possession of 700 plants of Ganja having stalks, flowering tops and leaves. The entire contraband material was gathered and measured which was more than 1402 kgs. Apart from this quantity of plants, more than 6 kgs dry Ganja was also found in the field of present

applicant. On the basis of said report, police have registered a crime against the present applicant.

3. Heard learned counsel for the applicant who submitted that the description mentioned in the FIR as well as Seizure Panchnama shows that the leaves and “*Bonde*” having been seized. He invited my attention to the inventory report and submitted that the inventory report nowhere shows that the seized material was consisting of the flowering or fruiting tops along with leaves. Moreover, it is not segregated before weighing the same. The requisitions which are forwarded to the CA also nowhere discloses that the leaves were accompanied with the flowering tops. The requisition regarding Muddemal seized and produced before the Magistrate at the time of inventory consists of flowering or fruiting tops. Thus, whatever seized was not within the definition of Ganja and therefore, the applicant has made out a case for grant of bail as regor under Section 37 of the NDPS Act is not attracted.

4. Learned APP opposes the said application and submitted that the CA report shows that the seized muddemal which was forwarded consists of flowering or fruiting tops. The CA report shows that result of the analysis is positive. He further submitted that the panchnama and the FIR discloses that along with leaves, there were fruiting tops and therefore, the rigour under

Section 37 of the NDPS Act will attract and in view of that, application deserves to be rejected.

5. On perusal of the recitals of the FIR and spot panchnama along with seizure panchnama, it reveals that description which is mentioned is leaves and “*Bonde*”. On perusal of the inventory report, it only discloses the branch of trees, greenish leaves and roots. It nowhere discloses that it was accompanied with the flowering or fruiting tops. The requisition letters while forwarding the contraband articles also disclose that it is leaves, it nowhere discloses that it was along with flowering or fruiting tops.

6. There is no dispute that commercial quantity under NDPS Act for Ganja means any quantity is greater than 20 kgs. Section 2(iii)(b)(c) of the NDPS Act defines Ganja as flowering or fruiting tops of cannabis plants (excluding the seeds and leaves when not accompanied by the tops), by whatever the name, they may be known or designated or any mixture with or without any neutral material of any of the above form of cannabis or any drinks prepared therefrom. Thus, the definition of Ganja clarifies that Ganja is flowering or fruiting tops of the cannabis plants excluding the seeds and leaves when not accompanied by plants. In the case in hand, as seen from the FIR and investigation papers that the quantity more than 1402 kgs plants were seized from the agricultural

field of the present applicant. However, seizure panchnama, FIR, requisition letter or inventory nowhere describes the said contraband article as flowering tops or fruiting tops. The description of Ganja mentioned is only leaves and "*Bonde*". All these documents show that these articles were leaves. It appears that when the said contraband article was measured, it was not segregated as segregating the flowering or fruiting tops. At the relevant time, there is no description mentioned as to the contraband article which is found in possession of the present applicant.

7. The above state of affairs would make it clear that there is nothing on record prima facie show that before carrying the weight of the seed plants of the Ganja, the investigating officer has segregated the flowering or fruiting tops and thereafter, it was forwarded to CA. In fact, the seizure panchnama nowhere shows that there was flowering or fruiting tops along with leaves.

8. On the contrary, the inventory report shows that there were only branches and the leaves when it is produced before the Magistrate for the inventory. There was contention of the learned counsel for the applicant that there is some substance. This Court has considered the definition of Ganja as well as observation of the Hon'ble Apex Court as far as regor under Section 37 of the NDPS Act is concerned, here also serially, the CA report

has mentioned that the sample as reference has tested positive for Ganja. However, for the first time, in substance, it was found that the drawn report of analysis referred to the sample and except the CA report, there is no document on record that since the contraband was having fruiting or flowering tops along with leaves. The NDPS Act defines Ganja under Sections 2 (iii) which includes that Ganja i.e. flowering or fruiting tops of the cannabis plants excluding the seeds and leaves when not accompanied by the tops.

9. From the reading of the aforesaid description, it can be seen that Ganja is a flowering or fruiting tops of the cannabis plants and when the flowering or fruiting tops are not accompanied, the seeds and leaves are fixed described. It is significant to note that the definition of Ganja under NDPS Act is fixed in its ambit, only the flowering and fruiting of tops and excludes the seeds were not accompanied by the tops. Thus, the definition of Ganja is restricted and it does not include the seeds and leaves of Ganja. The panchnama and the inventory do not reflect the presence of flowering or fruiting tops on the plant. In view of that, applicant has made out a case for grant of bail. Therefore, I proceed to pass the following order :-

ORDER

- i] The application is allowed.

ii] The applicant - **Anil s/o Dhuma Chavan** shall be released on bail in connection with Crime No.400/2023 registered under Section 20 of the Narcotic Drugs and Psychotropic Substances, Act, 1985, on executing P. R. Bond of Rs.50,000/- with one solvent surety of the like amount.

iii] The applicant shall attend the concerned police station once in a month on First Saturday between 10.00 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 in similar type of activities. On contravention of the said provision, the bail granted deserves to be cancelled.

vi] The Trial Court shall not influence with the observations of this Court which is only for the purpose of bail.

vii] The applicant shall attend the proceedings before Special Court without seeking any exemption unless there are exceptional circumstances.

10. The application is disposed of.

[URMILA JOSHI-PHALKE, J.]

Choulwar