IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1998 OF 2025
IN
CRIMINAL APPEAL NO. 418 OF 2025

Shersing s/o Ambu Indrekar
Age: 36 years, Occu.: Driver,
R/o. Galli No.9, Baluchi Galli,
Naregaon, Aurangabad **… Applicant**

Versus

State of Maharashtra
Through Police Inspector,
Police Station, Harsool,
District Aurangabad **… Respondent**

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WITH
CRIMINAL APPLICATION NO.4098 OF 2026
IN
CRIMINAL APPEAL NO.627 OF 2025

Vishal s/o Chagan Tamchikar
Age: 54 years, Occu.: Labour,
R/o. Baluchi Lane No.09, Naregaon,
Taluka and District Aurangabad. **.. Applicant**

Versus

The State of Maharashtra
Through the Officer In Charge,
Harsool Police Station,
Taluka and District Chh. Sambhajinagar **.. Respondent**

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Mrs. Rashmi S. Kulkarni, Advocate for the Applicant in Criminal Application No.1998 of 2025.

Mr. Hashmi S. Ubaid h/f Mr. Ramankumar G. Dodiya, Advocate for Applicant in Criminal Application No.4098 of 2026.

Mr. V. V. Jahagirdar, APP for the Respondent-State in both the matters.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 21.10.2026
PRONOUNCED ON : 23.10.2026

ORDER :

. The present applications seek suspension of sentence awarded to the applicants in Special (NDPS) Case No.429 of 2020 by the learned Additional Sessions Judge, Court No.6, Aurangabad vide judgment and order dated 11.04.2025, thereby convicting the applicants for the offence punishable under Section 20(b)(ii)(C) and 29 of the of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). The applicants have also prayed for their release on bail.

CRIMINAL APPLICATION NO.4098 OF 2026 :-

2. Learned Counsel for the applicant pointed out that applicant/accused No.2 was arrested on 01.10.2020. That, as on today, he has suffered almost six years incarceration. That, learned trial Court has granted 14 years imprisonment to the applicant.

Learned Counsel for the applicant apprised this Court about the story of prosecution in trial Court and would submit that the applicant was said to be behind wheels of the vehicle, which was allegedly owned by PW5 and though said witness deposed that accused No.1 was driver, there is no iota of evidence to substantiate that there was employment or engagement of accused No.1 in the capacity of driver of PW5. Learned Counsel for the applicant next submitted that even alleged seizure in the gunny bags, according to investigating machinery, were herbs, which are dark brown in colour having strong/pungent smell. That, Investigating Officer has admitted that leaves were wet. That, while drawing inventory before the learned Judicial Magistrate First Class, there were no fruiting of flowering tops, which are essential to hold that the contraband was only and only *Ganja*. Learned Counsel for the applicant invited attention of this Court to the definition of *Ganja* as provided in NDPS Act. She next submitted that there are no criminal antecedents. She pointed out that there is *prima facie* suspicion over inventory drawn by the learned Magistrate as the inventory panchanama is silent about fruiting top. Further, it is submitted that independent panchas have not supported the prosecution rendering the seizure doubtful. Consequently, it is her submission that there is incorrect appreciation of evidence as well as law by the learned Trial Court while convicting

the accused and as such, there is challenge to the judgment of conviction, but the appeal being of 2025 i.e. recent one, she urges for relief of suspension of sentence and grant of bail.

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3. Learned Counsel for the applicant would submit that the applicant is arraigned as accused No. 1 and has been falsely implicated merely on the ground that he was travelling in the vehicle, which was allegedly seized. He pointed out that the owner of the vehicle, PW5, merely deposed that accused No. 2 was his driver, and, as such, the role of the applicant/accused No. 1 is not clear. He further pointed out that the panch witnesses to the seizure have not supported the prosecution. He also pointed out that the police witnesses have given different versions regarding the direction in which the vehicle in question was proceeding. He further submitted that the applicant was on bail during the trial and did not misuse the liberty granted to him during that period. He also submitted that there are no criminal antecedents against the applicant. He submitted that the applicant has a good case on merits in the appeal.

. In support of above contentions, both learned Counsel for the respective applicants seek reliance on the following judgments :-

I. **Killo Subbarao and others v. State of Andhra Pradesh, 2025 SCC OnLine AP 2280;**

II. **Akshay v. State of Maharashtra and Mithun Pralhad Chavan and Ors. v. State of Maharashtra, MANU/MH/3744/2022;**

III. **Narcotic Control Bureau v. Lakhwinder Singh, MANU/SC/0178/2025;**

IV. **Mohammad Jakir Nawab Ali v. The State of Maharashtra, [Criminal Application (BA) No.602 of 2024 decided on 20.09.2024];**

V. **Satender Kumar Antil v. Central Bureau of Investigation and Ors., MANU/SC/0851/2022;**

VI. **Sanjay Kesram Pawara and another v. The State of Maharashtra, [Bail Application No.797 of 2025 decided on 30.06.2025];**

VII. **Anil Gujarya Pawara and another v. The State of Maharashtra, [Bail Application No.1170 of 2025 decided on 17.07.2025];**

4. Per contra, learned APP would strongly opposed the applications on the ground that huge quantity of *Ganja* was found in possession of accused persons. That, the applicants are main accused. That, on complete appreciation of evidence, conviction has been recorded. On the ground of long incarceration, he would submit that if at all applicants are desirous of conducting the appeals, the

prosecution is ready for the same.

5. Heard. Here is an application for suspension of sentence of applicant Shersing primarily on the ground that there is long incarceration. The seizure is comprising of wet leaves and seeds and there is no description of flowering tops at the time of seizure, which attracts the definition of *Ganja.* Thirdly, the inventory prepared by learned Judicial Magistrate First Class is contrary to the seizure, as it is silent on the point of fruiting tops.

. Whereas, applicant Vishal seeks relief of suspension of sentence and grant of bail on the ground that no role is attributed to him except for travelling in the vehicle allegedly carrying contraband with three other persons also in it. He also pressed present application on the ground of parity, as two ladies are already granted bail by this Court.

6. Perused the record. It appears that, acting on a secret information, PW1 informant intercepted Innova vehicle bearing No.MH-03-BC-2713. PW1 claims that when the vehicle was intercepted, two persons attempted to flee, but were chased and caught hold. Two ladies were found occupying the vehicle. The apprehended persons gave their names as Shersing and Vishal. In search of the vehicle, they were found to be carrying plastic bags from

where strong pungent odor was emanating and on inquiry, accused persons told that the said contraband was *Ganja* and, therefore, further procedure was undertaken. Thus, primarily, disclosure of contraband seems to be from the accused while in custody of police. Though PW1 claims that two running persons were apprehended, PW10 Investigating Officer, in his cross-examination, unable to name the police officer, who apprehended them while they were fleeing away from the spot. Again, as submitted, the panch witnesses to the seizure have not supported the prosecution. Though, as pointed out, the C.A. report refers to flowering tops, the inventory drawn by the learned Judicial Magistrate First Class refers to dry and wet leaves and seeds, which are dark greenish and brownish in colour. Thus *prima facie* there are no flowering tops, which constitute *Ganja*. Therefore, at least there are grounds to be dealt in appeal. Moreover, applicant Shersing is behind bars since six years. Applicant Vishal was on bail during the trial and there is no adverse remark against him regarding non-cooperation during trial. There are no reported criminal antecedents against either of the applicants. Two other female accused have already been granted the benefit of suspension of sentence and bail. Therefore, for the aforesaid reasons, the applicants succeed. Hence, the following order :-

ORDER

I. Criminal Applications stand allowed.

II. The substantive sentences imposed on the applicant in Criminal Application No.1998 of 2025 i.e. **Shersing s/o Ambu Indrekar** and applicant in Criminal Application No.4098 of 2026 i.e. **Vishal s/o Chagan Tamchikar** in Special (NDPS) Case No. 429 of 2020 by the learned Additional Sessions Judge, Court No.6, Aurangabad on 11.04.2025 stand suspended till the final hearing and disposal of Criminal Appeal No.418 of 2025 and Criminal Appeal No.627 of 2025 respectively.

III. The applicants be released on P.R. Bonds of Rs.15,000/- (Rupees Fifteen Thousand Only) each, with two solvent sureties in the like amount each.

IV. The applicants shall not indulge in any criminal activity.

V. The applicants shall remain present before the learned trial Judge once in six months, till the final hearing and disposal of the appeals, commencing from the date they tender their bail papers, and thereafter, the learned trial Judge shall fix dates for their subsequent appearances.

VI. In case of two consecutive defaults on the part of the applicants in remaining present before the trial court, the trial court shall inform this Court about the same, and in that eventuality, the prosecution shall be at liberty to file

applications for cancellation of the bail granted to the applicants.

VII. Bail before the trial court.

[ABHAY S. WAGHWASE, J.]

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