**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**

**BAIL APPLICATION NO.1948 OF 2026**

VIDESH SURESH MACHARE
VERSUS
THE STATE OF MAHARASHTRA

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Ms. Sana Raees Khan a/w Mr. H. P. Randhir, Advocates for Applicant
Mr. K. K. Naik, APP for Respondent – State.

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**CORAM : HITEN S. VENEGAVKAR, J.**

**DATED : 29th OCTOBER, 2026**

**ORDER :**

1. The applicant seeks regular bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, in connection with Crime No.183 of 2026 registered with MIDC CIDCO Police Station, Chhatrapati Sambhajinagar, for the offences punishable under Sections 8(c), 20(b)(ii)(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. He was arrested on 10th April, 2026. The investigation against him has culminated in a charge-sheet, registered as Special Case No.256 of 2026. His earlier application for bail was rejected by the Additional Sessions Judge on 18th August, 2026.

2. The prosecution states that on 10th April, 2026, Police Head Constable Sanjay Mohan Nand received information that a person of the description furnished by the informant would be

present near a white Fiat car behind Kakade Complex, Naregaon, with ganja intended for sale. The information was conveyed to the superior officer and arrangements were made for a raid. A police party, accompanied by two panch witnesses and a mobile forensic team, proceeded to the place. At about 1.15 p.m., the applicant was found standing near the white car bearing registration No.MH-20-BC-9597. The search of the car allegedly yielded a black sack from the dickey and two white sacks from the seating portion. The sacks contained wrapped packets of a greenish, moist, bud-like substance described as ganja. The aggregate weight recorded at the seizure was 53.441 kilograms, valued at Rs.26,72,050/-. The material and the car were seized.

3. The prosecution further states that the material had been procured from a person referred to as Reddy of Sambalpur, Odisha, and was intended to be supplied to Kishor Hatkar, Rahul Malke and Akash Arun Dahiyekar. Five persons have been arraigned as accused. The applicant alone has been arrested; the remaining four have not been apprehended. The charge-sheet includes the seizure panchanama, statements of the members of the raiding party and the panch witnesses, the crime-scene report of the forensic team, the proceedings before the Magistrate, the forwarding papers and the vehicle particulars. The vehicle

particulars record the applicant as the registered owner of the car, following its transfer to him on 25th January, 2024. The prosecution also relies upon the chemical analysis report tendered during the hearing.

4. Learned Advocate for the applicant submits that the applicant has been falsely implicated and that his presence near the car cannot, by itself, establish conscious possession. She submits that there is no independent electronic or financial material connecting him with the alleged supplier or the intended recipients. The investigation is complete and no further recovery is required from him. He has no criminal antecedents, has a permanent residence and has been in custody for about six months. He is willing to abide by stringent conditions.

5. Learned Advocate for the applicant submits that the more fundamental difficulty concerns the identity of the seized substance. The FIR and the seizure panchanama describe moist or wet ganja, whereas the forensic crime-scene report prepared on the same day describes dried greenish vegetative material suspected to be ganja. The Magistrate's certificate describes blackish knotty leaves. None of these documents expressly records flowering or fruiting tops. She submits that the subsequent chemical analysis report, which describes flowering or fruiting tops

with brownish-greenish leaves, seeds and stalks, introduces an essential feature absent from the earlier documents. According to her, these successive differences cannot be dismissed as variations in terminology and raise a serious doubt whether the article analysed was the article seized.

6. Learned Advocate for the applicant further submits that the recorded weight includes the sacks, wrapping and parts of the plant which do not answer the statutory definition of ganja. The crime-scene report expressly states that its weights are approximate and inclusive of the bags. It also refers to fluctuations in the photographs. No reliable net weight of the prohibited substance has been established. She submits that the description of the material as ready for sale does not dispense with proof of flowering or fruiting tops. Nor can Section 2(iii)(c), concerning mixtures, convert leaves or other unprohibited parts of a cannabis plant into ganja without proof that a prohibited form of cannabis was present. She points out that the accusation concerns possession under Section 20(b), and not cultivation under Section 20(a).

7. Learned Advocate for the applicant submits that the sampling defect is equally serious. The seizure was on 10th April, 2026, whereas the Magistrate's certificate bears the date 22nd

April, 2026. Three sacks containing 44 packets were produced, but the certificate records only one sample of 52 grams, marked 'S'. It does not identify the packet or sack from which that sample was drawn, record equal contributions from each packet, or show a permissible formation of lots and drawing of samples in duplicate. She submits that the chemical report relating to this sample cannot establish the nature of the entire bulk. She also questions its belated production and submits that these defects, considered together, satisfy the requirement for bail under Section 37.

8. In support, learned Advocate for the applicant relies upon ***Mohammad Jakir Nawab Ali v. State of Maharashtra***, Criminal Application (BA) No.602 of 2024, decided at Nagpur on 20th September, 2024; the order cited as ***Akshay Rajendra Kadam v. State of Maharashtra***, Criminal Application (BA) No.737 of 2024, dated 12th September, 2024; ***Ganesh Prakash Golesar v. State of Maharashtra***, Bail Application No.2469 of 2023, decided on 7th October, 2023; ***Hari Mahadu Valse v. State of Maharashtra***, Bail Application No.2299 of 2019, decided on 29th July, 2021; ***Hanmant Dharma Shinde v. State of Maharashtra***, Bail Application No.1792 of 2022, decided on 11th November, 2022; and ***Ibrahim Khwaja Miya Sayyed alias Raju v. State of Maharashtra***, Bail Application No.1296 of 2022, decided on 17th March, 2023. She

submits that these decisions require careful scrutiny of the composition and weight of the material before treating the seizure as one involving commercial quantity.

9. Learned Advocate for the applicant also relies upon ***Venktesh Shiva Permal v. State of Maharashtra***, 2024 SCC OnLine Bom 251, and the Aurangabad Bench order dated 3rd January, 2023, cited during the hearing as Bail Application No.1986 of 2022, to support her objections to sampling and statutory compliance. She relies upon ***Manjay Kumar v. State NCT of Delhi***, 2026 SCC OnLine Del 1144, for the submission that an unrepresentative sample and uncertainty about the presence of flowering or fruiting tops may justify bail notwithstanding a positive forensic report. She further relies upon ***Rajesh Sahu v. State of Chhattisgarh***, Criminal Appeal No.3807 of 2025 arising out of SLP (Criminal) No.10001 of 2025, decided on 1st September, 2025. As regards ***Shiv Kumar Mishra v. State of Goa***, (2009) 3 SCC 797, to which her attention was invited during the hearing, she submits that the presence of flowering parts had been established in that case after evidence, whereas the foundational identity of the substance remains disputed here.

10. Learned APP submits that the applicant was found near his own vehicle with three sacks of packaged material, that the

recovery was documented in the presence of panch witnesses and forensic personnel, and that the chemical analysis report expressly describes flowering or fruiting tops along with the other vegetative parts. According to the prosecution, the material was prepared and packed for sale, rather than being a seizure of uprooted plants from an agricultural field. Learned APP submits that seeds and leaves accompanied by the tops are not excluded from the definition of ganja and also places reliance upon the provision concerning mixtures. The prosecution opposes bail on the ground that the seizure involves commercial quantity and the conditions under Section 37 have not been fulfilled.

11. Before considering the submissions, it is necessary to clarify their scope. Although the application contains a ground alleging that grounds of arrest were not furnished, that ground was not urged during the hearing. No finding on that distinct question is therefore being recorded in this order. The principal question arising from the submissions advanced is whether, on a fair assessment of the material and the objections raised, there are reasonable grounds for believing that the applicant is not guilty of the offence involving commercial quantity. Section 37 requires more than a reference to the seriousness of the accusation. Equally, the applicant is not required to establish his innocence by

conducting a defence trial at the stage of bail. The Court must examine whether the prosecution material, read with the infirmities apparent from the record, permits the statutory satisfaction. The objections concerning identity, quantity and sampling therefore require consideration at this stage; they cannot all be postponed to the trial merely by describing them as disputed questions.

12. The relevant definition is Section 2(iii)(b), and not a separate provision described as Section 2(b). Ganja means the flowering or fruiting tops of the cannabis plant, with seeds and leaves excluded when they are not accompanied by the tops. Section 2(iv) separately defines the cannabis plant. Section 20(a) concerns cultivation, whereas Section 20(b) includes prohibited possession and other dealings in cannabis. The applicant is therefore right that possession of unspecified plant material cannot be equated with possession of ganja merely because it originated from a cannabis plant. Section 2(iii)(c), which concerns mixtures with or without neutral material of the forms of cannabis referred to in the preceding clauses, does not eliminate the need to establish the presence of a prohibited form of cannabis.

13. In ***Shiv Kumar Mishra*** (Supra), the Supreme Court rejected the contention that the seeds and leaves had necessarily

to be excluded where the seized material included leafy and flowering parts. The decision also does not support a compulsory reduction of the seizure weight merely because the substance was moist. The applicant is correct that the factual finding in that case followed a trial. That distinction prevents the Court from importing that factual finding into the present case, but it does not displace the interpretation of the definition. The enquiry in the present case here remains whether there is prima facie material showing the presence of the tops; neither the word ganja used by the police nor the fact of packaging can supply that requirement by itself.

14. The chemical analysis report relied during the hearing is material to this enquiry because the description relied upon by both sides includes flowering or fruiting tops, brownish-greenish leaves, seeds and stalks. The report must be assessed with its limitations, it concerns the sample examined and does not, merely by being positive, establish that every packet contained the same substance. Nevertheless, the express botanical description in that report cannot be disregarded solely because the FIR or the inventory did not use the statutory expression. Those documents describe what was observed during the seizure and inventory; the laboratory report addresses the composition of the article submitted for examination. The earlier description of a bud-like

substance also forms part of the record. Taken together, these circumstances provide prima facie support for the presence of ganja in the material sampled.

15. The differences between moist greenish material, dried greenish vegetative material and blackish knotty leaves are relevant, particularly because the first two descriptions were recorded on the same day. At the same time, a difference in these general descriptions is not, by itself, affirmative proof of substitution. The forensic crime-scene report records three groups comprising 13, 21 and 10 packets. The Magistrate subsequently records the corresponding groups of 13, 10 and 21 packets in the two white sacks and the black sack. This correspondence is a material circumstance supporting continuity of the seized articles. The forwarding letter dated 23rd April, 2026 and the laboratory acknowledgment of 27th April, 2026 also record receipt of one sealed packet with the seal tallying. These papers provide support for the necessary link.

16. The question of quantity requires further consideration. The crime-scene report records approximately 16.625, 21.695 and 15.121 kilograms, inclusive of the bags, aggregating to 53.441 kilograms. The Magistrate's certificate records 16.655, 15.130 and 21.865 kilograms, aggregating to 53.650 kilograms. Thus, there is

a difference of 209 grams, and there is an express qualification concerning packaging in the initial report. The figure of 53.441 kilograms cannot be described as a scientifically established net weight. Packaging and material which falls outside the statutory definition cannot lawfully be counted. Equally, the whole weight of seeds and leaves cannot automatically be deducted where they accompany the tops. No finding that the entire bulk was segregated botanically can be drawn from the assignment of the labels A, B and C; those labels identify the sacks.

17. The commercial-quantity threshold for ganja is 20 kilograms. The substantial recorded bulk, its division into 44 wrapped packets, the contemporaneous description of the contents and the reported identification of flowering or fruiting tops provide prima facie support for the prosecution allegation that the seizure exceeded that threshold. It is also not based upon an assumed percentage of tops, moisture or packing. Having considered the gross-weight qualification and the vegetative material described in the report, I am not persuaded that those matters presently furnish reasonable grounds for treating the prosecution allegation of commercial quantity as untenable.

18. The sampling objection by the counsel for applicant , however, goes beyond a mere complaint about weight. For a seizure

in April 2026, the applicable provisions include the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. Rule 10 requires a sample in duplicate from each package or container, subject to the prescribed conditions for bunching identical packages into lots. In the case of ganja, a lot may contain no more than 40 packages. A composite sample requires equal quantities from each constituent package. The Magistrate's certificate does not explain how these requirements were fulfilled in respect of the 44 packets. Neither the number of packets nor their different recorded weights permits the Court to presume that one lawful lot was formed. The certificate also does not identify the source of the 52-gram sample or record its duplicate. The presence of the Magistrate does not cure these omissions, and I am not recording a finding of complete compliance.

19. The consequence of that deficiency must nevertheless be assessed with the remaining evidence. In the case of ***Bharat Aambale v. State of Chhattisgarh***, ***(2025) 8 SCC 452***, the Supreme Court explained that non-compliance with Section 52A does not invariably extinguish the prosecution and that the effect of the breach must be assessed in the evidentiary setting of the case. That decision does not license disregard of a defect affecting the identity

of the bulk. In ***Narcotics Control Bureau v. Kashif***, (2024) 11 SCC 372, the Supreme Court disapproved the grant of bail solely for belated compliance without the assessment required by Section 37. Here, the applicant has identified a specific deficiency in representativeness, and the prosecution must account for it. I have therefore considered that deficiency together with the contemporaneous forensic documentation, the corresponding packet counts, the Magistrate's production record and the sealed receipt, rather than treating the positive report as conclusive.

20. The interval between seizure and certification also requires consideration. The remand papers of 11th April, 2026 refer to obtaining an inventory through the Court, and an inventory is annexed. Certification and sampling were recorded on 22nd April, 2026, with the forwarding letter issued the following day and laboratory receipt on 27th April, 2026. This sequence does not establish full compliance with the requirement of prompt sampling and dispatch. It does, however, prevent the interval of twelve days from being treated, without further enquiry, as proof that the agency first sought judicial proceedings only on the twelfth day. Nor does the later tendering of a report, without more, establish fabrication. Its actual date, the sample reference and the custody link remain matters for proof.

21. The applicant's authorities underline the need for this scrutiny. In case of ***Hanmant Dharma Shinde*** (supra), concerned with the plants weighed with soil adhering to their roots. In the case of ***Mohammad Jakir Nawab Ali*** (supra), concerned an inventory and seizure description including several parts of plants and substantial additional circumstances favouring bail, including prolonged custody and the applicant's medical condition. The case of ***Ibrahim Khwaja Miya Sayyed*** (supra) concerned a recorded bulk only one kilogram above the threshold and an express finding that the sample was not representative after the contents of both bags were mixed. In ***Venktesh Shiva Permal*** (supra), the applicant's own bag contained 8.655 kilograms, and the accusation of commercial quantity involved the recoveries from the other accused as well. The Court granted relief on the combined deficiencies found there, after explaining the need to assess the particular sampling violation. Here in present application the prosecution attributes the three sacks in one vehicle to this applicant on the recovery and ownership material. These distinctions do not dispense with representative sampling; they inform the cumulative assessment explained above.

22. In case of ***Hari Mahadu Valse*** (supra) and ***Ganesh***

***Prakash Golesar*** (supra), cannot be distinguished merely by saying that a chemical report is available here or that the alleged quantity exceeds 20 kilograms. Those cases also involved forensic descriptions of flowering parts with other vegetative material and substantial recorded quantities. They illustrate that the composition of the bulk and the other circumstances may create sufficient doubt for bail. They also involved materially longer periods of custody; in case of ***Hari Mahadu Valse*** (supra), the trial had not commenced after nearly four years. The order dated 3rd January, 2023 in ***Popat Govardhan Nagode v. The State of Maharashtra***, Bail Application No.1986 of 2022, additionally recorded defects concerning statutory safeguards. These orders do not require the same result without assessment of the particular seizure and its supporting records.

23. In case of ***Rajesh Sahu*** (supra), the Supreme Court granted bail where the recorded seizure was only a little above commercial quantity and included material requiring exclusion, the charge-sheet had been filed and the accused had no antecedents. That decision must be given full effect, but it does not prescribe an automatic deduction of every seed or leaf irrespective of whether it accompanies the tops. Case of ***Manjay Kumar*** (supra) likewise demonstrates that a positive forensic report does not

necessarily overcome substantial defects in representative sampling. Its reasoning has been considered. On the particular combination of the contemporaneous crime-scene record, correspondence of the three packet groups at judicial production, the reported composition of the sample and the supporting recovery material in this case, I am unable to reach the favourable satisfaction sought by the applicant.

24. On the applicant's connection with the recovery, the material goes beyond his presence near an unidentified car. The vehicle particulars record his ownership of the vehicle bearing the same registration number as that recorded in the seizure documents, and the seizure witnesses place him beside that vehicle when the three sacks were recovered. This combination permits a prima facie inference of knowing control, subject to the defence at trial. The difference between referring to the car by its make and recording its model in the vehicle extract does not, at this stage, displace its identification by the registration number. I have not considered applicant's alleged confession to the police as substantive proof of guilt. The requisitions for telephone records are also not being treated as proof of incriminating communications. Even if the present material concerning the wider conspiracy requires further proof, the separate accusation

arising from the alleged possession remains for consideration.

25. The other objections do not presently displace that material. The recovery relied upon is from the vehicle and its sacks; the objection under Section 50 concerning personal search does not invalidate that recovery merely because a notice was issued. The papers contain the recorded information, communications to superior officers and a report dated 11th April, 2026 under Section 57. They do not support the broad contention that no such steps were taken at all. The panch witnesses' employment with the transport undertaking does not by itself establish that they were under police control or that their account was fabricated. Their credibility remains open to challenge. The absence of a further recovery during the house search of 14th April, 2026 does not negate the alleged recovery from the car.

26. I have considered the contemporaneous recovery and forensic records, the applicant's connection with the car, the judicial production of corresponding packet groups and the reported identification of flowering or fruiting tops retain sufficient prima facie force that I am unable to record reasonable grounds for believing that the applicant is not guilty of the offence involving commercial quantity. This is a limited assessment under Section

37 and not a finding that the disputed bulk has already been proved to be ganja beyond reasonable doubt.

27. The absence of antecedents, the applicant's residence and his willingness to comply with conditions weigh in his favour. The fact that the other accused have not been arrested provides no parity, but it also does not justify an unsupported prediction that this applicant will assist them or commit another offence. The two requirements under Section 37 are cumulative, and the inability to record the first satisfaction is sufficient in the present circumstances. Completion of investigation does not by itself remove that statutory limitation. The custody of about six months, while significant to the applicant, has not on the present material developed into such prolonged incarceration or demonstrated trial stagnation as would independently warrant release on constitutional grounds. Continued detention must remain subject to a reasonably prompt trial and to reconsideration if material circumstances change.

**ORDER**

(i) Bail Application No.1948 of 2026 stands rejected.

(ii) All observations concerning the nature and quantity of the substance, possession, statutory compliance and the evidentiary link are confined to this

application. The trial shall be decided independently on the evidence, uninfluenced by these observations.

(iii) The distinct question concerning communication of grounds of arrest, which was not urged, is left open.

(iv) This order shall not preclude a fresh application founded on a material change in circumstances, including undue delay in the trial.

**(HITEN S. VENEGAVKAR)**
**JUDGE**