



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

**CRIMINAL APPEAL NO. 848 OF 2025
WITH
CRIMINAL APPLICATION NO. 4193 OF 2025**

Subhash Mahadu Mahajan,
Age. 45 years, Occu. Agriculturist,
R/o. Jarandi, Tq. Soygaon,
Dist. Chhatrapati Sambhajanagar.

...Appellant

Versus

State of Maharashtra,
Through Police Inspector,
Soygaon Police Station,
Tal. Soygaon, Dist. Chhatrapati Sambhajanagar.

...Respondent

...
Advocate for Appellant : Mr. Rehan Khan
and Mr. Al. Amoodi A.M. h/f. Mr. Syed G.R.
APP for Respondent : Ms. M.N. Ghanekar
...

**CORAM : RAJNISH R. VYAS, J.
DATE : 07TH MARCH, 2026**

ORAL JUDGMENT :

1. This appeal, at the instance of the sole accused, challenges the judgment in Special Case No. 386/2022 passed by the learned Additional Sessions Judge – 2, Aurangabad. The appellant was convicted of an offence punishable under Section 20 (a) (i) of the Narcotic Drugs and Psychotropic Substances Act, 1985, and sentenced to rigorous imprisonment for five years and a fine of Rs. 10,000/-. A default sentence

of three months' simple imprisonment was also imposed upon the appellant.

2. Heard Mr Rehan Khan, along with Advocate Mr Al. Amoodi and Learned APP Ms Ghanekar, for the State, at length.

3. In short, it is the case of the prosecution that the appellant was cultivating Cannabis plants on Gut No. 29, which is an offence under the provisions of Section 20 of the Act of 1985. It is this conviction that the appellant assails through his lawyer, Mr Rehan Khan. Mr Khan has argued as follows:

- i. There is nothing on record to prove that it was the appellant who was cultivating the land.
- ii. The case has not been proved beyond a reasonable doubt.

4. Ms Ghanekar, learned APP, per contra, has submitted that the prosecution has proved the case beyond a reasonable doubt, and the accused has nowhere stated that the other owners of the property were cultivating / in possession of the property.

5. At this stage, it is necessary to mention that receipt of secret information has resulted in summoning the panchas, conducting the raid, informing the superior officers, submitting a letter to the Magistrate for

certifying the inventory , drawing a spot panchnama, forwarding the material for chemical analysis and ultimately filing a chargesheet.

6. The first information report no. 0199/2022 was the trigger point that set criminal law in motion and, consequently, led to the filing of a chargesheet, as stated above.

7. Upon submission of the final report, the Special Court found a prima facie case against the accused, resulting in the framing of charges as per Exhibit 13-C dated 18.02.2023. The charge against the accused reads as follows:

“That you accused on 12.10.2022 at about 16.00 hours in your agricultural field, Gat No. 29, situated at Jarandi Village, Tq. Soygaon, District Aurangabad, found cultivating living plant of Ganja of different size and weighing in all 62 Kg 190 gram worth of Rs. 315950/- strong smelling, some damp moist, in contravention of the provisions and Rule of the NDPS Act, 1985 and you thereby committed an offence punishable U/s 20 (a) (i) of NDPS Act, and within cognizance of this court. And, I hereby direct that you be tried by me for the above-said charges.”

8. As the accused did not plead guilty, the prosecution examined all four witnesses, mentioned below :

A. List of prosecution witnesses :-

RANK	NAME	NATURE OF EVIDENCE
PW 1/ Exh. 40	Anmol Vinayak Kedar	First Informant
PW 2/Exh. 54	Vishwajit Dilip Tayade	Panch witness
PW 3 / 57	Nana Khandu More	Panch witness / Gazetted Officer
PW 4 / 63	Satish Pandharinath Pandit	Investigating Officer

9. A total of twenty-eight documents were relied upon by the prosecution.

10. The accused neither entered the witness box nor examined any other witnesses, but when enquired under Section 313 Code of Criminal Procedure, more particularly in answer to question no. 36, he stated that the place from which the material was seized is not owned by him and that he was implicated in a false case.

11. As the applicant is convicted for the commission of an offence punishable under Section 20 (a) (i) of the Act of 1985, it is necessary to go through the aforesaid provision :

“20. Punishment for contravention in relation to cannabis plant and cannabis.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder,—

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable,—

(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may be extended to one lakh rupees; ”

12. In order to determine the question, whether the appellant has cultivated the cannabis plant, the testimony of witnesses will have to be looked into .

13. P.W. 1 is Anmol Vinayak Kedar, who was working as an Assistant Police Inspector at Soygaon police station on 12.10.2022. He received secret information that the accused was cultivating cannabis plants in an agricultural field bearing Gat No. 29, of which he made an entry in the station diary. The superior officer, i.e., the Sub Divisional Police Officer, Sub Division, Sillod, was informed of the aforesaid fact telephonically and thereafter a written report was forwarded. He was then authorised to carry out the raid and consequently, the request letter was issued by P.W. 1 to his superior officer, below exhibit 41. The permission to conduct the raid was granted and document to that effect was produced

and proved on record by the prosecution through P.W. 1, below Exhibit 42.

14. P.W. 1 then, to carry out the search and seizure, issued letters to the taluka Magistrate, below exhibit 43, a letter for providing panchas, and to the taluka agricultural office, Soygaon, below exhibit 44. Exhibit 45 was the communication to the panchas regarding performing their duties as Panchs. P.W. 1 then summoned the weighing man, as well as the videographer, and documents to that effect were produced as exhibits 46 and 47. Even a private driver/owner of a private vehicle was called by issuing the letter under exhibit 48.

15. PW 1 deposed that One Nana More, Naib Tahsildar and Gazetted Officer, was also called . Two other panchas, along with the weighing man and others, proceeded towards the spot of enquiry. Before that, the purpose for carrying out the raid and the secret information report received was disclosed to the members of the raiding party. Personal search of P.W. 1, along with the other police officers, was conducted, in which no incriminating material was found. A personal search of the panchas was conducted, during which nothing incriminating was found. The kit, carrying a seal and other materials, was also taken with reading party .

16. PW1 has deposed that Upon reaching the incident spot, one person working in the field was observed; the vehicle was stopped, and an enquiry was made about Gat No. 29. The person standing there stated that the field is Gat No. 29 and disclosed his name as Subhash Mahajan/appellant. Then, he was asked whether the well was situated there, and he answered in the affirmative. As information indicated that cannabis plants were cultivated near the well, all members of the raiding party were introduced to the appellant. Notice below, exhibit 49, was then given to the accused under Section 50(1) of the NDPS Act.

17. On being asked whether he had cultivated the Cannabis plant, the accused replied in the affirmative and pointed out the spot where the plants were cultivated. The spot was then visited, and the Cannabis plants were found; the panchas from the agricultural department even identified them. All the plants were then uprooted with the help of a hoe / agricultural tool, and after the raid, it was found that weight of plants was 63 kg and 190 gm. The collected samples were forwarded: 100 grams for chemical analysis, 100 grams for the accused, and 100 grams for the police. The plants were then cut and put into the sacks. The soil samples from the areas where the plants were cultivated were collected, as were the soil attached to the roots. Then, the bags

containing Ganja were weighed, which were found to weigh 63 kg 835 gm. The photographs were taken. The muddemal property was then sealed, and a panchnama was drawn below exhibit 50, with the signatures of the panchas and the Gazetted Officer.

18. The accused was then taken to the police station, and the procedure carried out was informed to the superior officers. P.W. 1 then himself lodged a complaint below exhibit 51, and the printed FIR was at exhibit 52, which he proved. The accused was identified in Court, and ASI Mr Pandit carried out further investigation. A letter was submitted to the Magistrate requesting the preparation of an inventory, which was carried out and included as Exhibit 53. Subsequently, the certificates issued by the Magistrate were proved as Exhibits 54 and 55, and a detailed inquiry was forwarded to the Superintendent of Police.

19. At this stage, it is necessary here to mention that Mr. Khan, learned counsel, has stated that though there are several lapses which can be brought to the notice of the Court, but to cut short the controversy, only ground is that though the land in question was mutated in the name of several persons, the appellant was named as an accused. It is submitted that there was no material on record to show that it was the appellant who was cultivating the land.

20. Coming to cross examination of P.W. 1 in Which he stated that the station diary, regarding the receipt of secret information, shows the name of one Mahajan as an agriculturist. He further admitted that, even in the raiding party, the name of one of the persons was Mahajan. He further admitted in Exhibit 57, which is Station Dairy Entry No. 005 dated 12.10.2022, it refers to survey no. 28 or 29.

21. P.W. 1 has also admitted that, when the information was received, he was not aware whether the Cannabis plants were in Gat Nos. 28 or 29. Then, the question was asked whether the P.W. 1 had been to Gat No. 28, he answered that he could not tell confidently what the Gat number was, but added that the person there had disclosed it was Gat No. 29. He further admitted that there had been a discussion with the Naib Tahsildar regarding Gat Nos. 28 and 29. Still, before conducting the proceedings, he did not issue a notice to the concerned Talathi or Block Officer.

22. He admitted that he had received secret information as to in which part of Gat Nos. 28 and 29 the aforesaid plants were cultivated. But the entry to that effect was not taken in the station dairy. He admitted that before conducting the raid, verification of ownership of Gat nos. 28 and 29 and of the names reflected in the 7/12 extract was not done. P.W.

1 admitted that in Exhibit 42, the name of the accused and the number of the Gat are not mentioned. Exhibit 42 is the authority letter given by the Superior Officer to P.W. 1 to carry out the raid.

23. He also admitted that in exhibit 41, the full name of the accused is not mentioned, so also in exhibits 43, 44, 47 and 48. He also admitted that, during the raid, he did not verify in whose name Gat No. 29 stood or who the cultivators of the land were. He also admitted that he had not enquired with people about the boundaries mentioned in the panchnama.

24. In this background, I have gone through the testimony of the aforesaid witness as well as the testimony of P.W. 2, 3 and 4. PW2, 3 and 4, so far as the aspect of cultivation and seizurer is concerned he has deposed in the same line in which the PW1 has deposed.

25. The documentary evidence more, particularly exhibit 66 which is 7/12 extract of Gat No. 29 shows the land as class 1 and the name of occupiers are Malobai Mahadu Mahajan, Subhash Mahadu Mahajan, Sunil Mahadu Mahajan and Dattu Raghunath Mutthe. since the names of the total four persons were mentioned in the exhibit 66 i.e. 7/12 record, it was the duty of the Investigating Officer to verify which person

was occupying or cultivating the portion of land where the Cannabis plants were found growing. The 7/12 extract also shows various mutation entries taken. So far as the present appellant is concerned, it shows that his name was mutated in the mutation entry no. 3177.

26. As neither P.W. 3, 4 nor 5, had stated that it was the present appellant who was the absolute owner, possessor or cultivator of the land, the cultivation of the aforesaid land cannot be blamed on the present appellant.

27. PW2/was the Panch witness who was called in a police station, who was attached to the office of taluka agriculture office. He has deposed that on the directions given by his senior officers, he had attended the police station along with his colleague Mr Arjun Suradkar, where he met with PW no 1, who informed him about the raid which is required to be conducted.

28. PW2, then stated that he along with other raiding parties proceed to the spot of incident and when they reach, they enquired from one person who disclosed his name has stated. The field was having gat number 29. There they found plantation of the cannabis plant near the

well, he also stated that the plant was uprooted, it was wet, kept in a sack and thereafter Panchama was prepared below exhibit 50.

29. This witness has admitted that except the accused, Nobody has stated that the field survey number was 29. He also admitted that in adjoining fields, labourers were working. He further stated that he has seen 7/12 extract in which the name was accused was there, but he stated that he doesn't remember whether anybody else's name was there. When question was asked whether any document was noticed by this witness that the accused was in possession of the well, he replied that within the boundaries of the field well was situated.

30. PW 3 is also examined by the prosecution, who was working on the post of Naib Tahsildar in the Tahsil Office, Soygaon, on 12th October, 2012, who deposed that he was asked to attend the police station by the Taluka Magistrate and accordingly he attended the police station, where he was informed about the raid to be conducted. He then joined the raiding party and reached Gut No.29. PW 1 then was asked about the agricultural field of the accused to the persons, who were in the adjoining field, who pointed out towards the well. Accordingly, they reached to the said well where the accused was present. PW 1 then asked the accused that he had planted cannabis plant and thereafter the accused showed the

spot where the cannabis plants were standing which were having 7 to 8 feet height and numbers of which were 35. The plants were then uprooted and were weighted which were of 63.190 kgs. The officer of the agricultural department inspected the plant and disclosed that those were cannabis plant. This witness was subjected to cross-examination, in which he admitted that in Gut No.29, names of 4 to 5 persons are recorded. When question was put, whether any evidence was found from the spot, it was replied that it was admitted by the accused that the well was owned by him. He also admitted that the persons, who gathered there, were not subjected to enquiry by the police officers. Other suggestions were denied.

31. So far as PW 4 is concerned, he is the Investigating Officer, who has carried out further investigation and has deposed that he had also participated in the raid. He deposed about the procedural aspect of carrying out of raid and also stated that he obtained 7/12 extract from the concerned Talathi, which was below exhibit 66 and extract 8-a at exhibit 67. He admitted that he had recorded the statements of the witnesses, who were present at the adjoining fields. In cross-examination he has stated that he had received the information about Gut No. 28 and 29 and he had taken entry to that effect in station diary. He further admitted that

he did not make any enquiry by visiting Gut No.28 and did not obtain information regarding the names recorded in 7/12 extract pertaining to Gut No.29. He also stated that he is unable to state the area of said gut number. He further admitted that he did not record the statement of Talathi. He admitted that in Exhibit 66, which is 7/12 extract, names of Malobai Mahadu Mahajan, Subhash Mahadu Mahajan, Sunil Mahadu Mahajan and Dattu Raghunath Mutthe, are recorded and in the said land four persons have the agricultural field. He admitted that he did not enquire by visiting the spot whether partition had taken place or not. He admitted that he did not record the statements of Malobai Mahadu Mahajan and Sunil Mahadu Mahajan.

32. It is neither disputed by the learned APP, nor is it clear from the record of the case as to whether it was the present appellant who was responsible for cultivating the Cannabis plants on the aforesaid part of the land. Since the aforesaid fact goes to the root of the matter, it cannot be said that the prosecution has proved the case beyond a reasonable doubt.

33. At this stage, it is necessary to mention here that though the area, i.e. 0.80, is mentioned in the 7/12 extract as occupied by the present appellant, the fact remains that which area fell into his share is not

brought on the record by the prosecution. The mutation entry 3177 would have been of a great help to the prosecution, but surprisingly, it has not been done.

34. It is required to be taken into consideration that heart of Section 20 (a) (i) is 'Cultivation'. The High Court of **Kerala in the case of Jatin S/o. Kartar Singh Versus State of Kerala, in CRL. MC. No. 8469/2025**, decided on 04.12.2025, has dealt with the aforesaid aspect, more particularly, paragraph nos. 13 and 14, which read as under ;

“13. The expression 'cultivate' has not been defined in the Act. Therefore, it becomes necessary to ascertain the ordinary or the literary meaning of the word. In The Law Lexicon (Fourth Edition, 2017), at page 407, 'cultivate' means "to improve the product of the earth by manual industry; to till or husband the ground to forward the product of the earth by general industry". In Stroud's Judicial Dictionary of Words and Phrases (Seventh Edition, 2008), at page 610, the word 'cultivate' means "Cultivate ... cannabis" (misuse of Drugs Act, 1971 (c.38), s.6. Growing cannabis plants in pots at a bedroom window was held to be 'cultivating' them for the purposes of this section."

14. *The above literal meanings clearly indicate that the expression 'cultivate any cannabis*

plant' used in [Sections 8 \(b\)](#) and [20 \(a\)](#) of the Act encompasses any act of planting, tilling, raising, growing, farming or gardening a cannabis plant with the mens rea, whether such cultivation is carried out in the earth or in a pot. The statute does not distinguish between planting in the earth or growing in pots. The essence of the offence lies in the conscious act of planting and nurturing a cannabis plant in contravention of the provisions of the Act. Consequently, the argument of the learned counsel for the petitioner that the cultivation must necessarily be in the earth is unsustainable in law.”

35. Cultivation would necessarily entail taking care of the plants. Thus, no positive evidence is brought on record that it was the present appellant/applicant who was cultivating the land. At least an attempt should have been made by the prosecution that it was the present applicant who was actively involving growing the plant or nurturing the plants until it developed.

36. At this stage, it is necessary, to note that honourable apex court in case of **Alakh Ram Versus State of Uttar Pradesh, reported in 2004(1) SCC 766**, has dealt with somehow similar situation and paragraph no. 6 would be relevant:-

“6. The above evidence is to be appreciated in the background of other evidence on record. Appellant Alakh Ram, his father and brothers owned 70 bighas of land. The prosecution has not produced any document to show that the property from which the Ganja plants were uprooted belonged to appellant Alakh Ram exclusively. The witnesses who were examined in support of the prosecution also have not given any evidence to show that this property belongs to appellant Alakh Ram. There is no satisfactory evidence either oral or documentary to show that the appellant has a right over the property from which the Ganja plants were recovered. There is no evidence that the appellant cultivated these Ganja plants. Having regard to the extent of the property and the number of plants recovered from that property, it cannot be said that these plants had been the result of cultivation. They may have been spouted there by natural process and the appellant or anybody who is the owner of the property must not have been diligent in destroying the plants. There is no evidence to prove that there was cultivation of Ganja plants by the appellant and the Additional Sessions Judge wrongly convicted him as the evidence adduced by the prosecution was not carefully scrutinized by the Court. The High Court committed error in confirming the conviction and sentence of the appellant.”

37. In the present case, also nothing has been brought on record to show that it was the appellant who has cultivated the cannabis plant.

38. Mr Khan, learned counsel, has rightly relied upon the judgment reported in **2017 SCC Online Bombay 8973 in the case of Madhukar Versus State of Maharashtra**, more particularly, paragraph no. 7, which reads as under :

“7. The learned counsel for the accused is also justified in submitting that it is not proved beyond a reasonable doubt that the courtyard in which the cannabis plants were found was in possession or under the control of the accused. The prosecution examined Sunil Mondhe, the Secretary of Gram Panchayat, on 13.10.2000 at Exh. 20. However, it is apparent from perusal of the certificate Exh.20 and the evidence of P.W.2 that the prosecution has not proved the boundaries of the property owned by the accused. Axiomatically, it is not conclusively established that the courtyard was under the control of or in possession of the accused. The evidence on record would in fact suggest that the place where the cannabis was found was surrounded by several houses, concededly not owned by the accused.”

39. He has also relied upon the judgment of Kerala High Court reported in **2015 (31) RCR (Criminal) 935 in the case of Harikumar**

Versus State of Kerala, more particularly paragraph no. 13, which reads as under :

“13. In short, the mere presence of the appellant on the property does not establish ownership or possession of the property from which the ganja was seized. The burden lies on the prosecution to prove, by cogent and reliable evidence, that the appellant was in exclusive possession of the seized ganja. In the absence of such evidence, the conviction and sentence passed by the trial court under section 20 of the NDPS Act are liable to be set aside.

In the result, the conviction passed by the Special Court under Section 20(a) r/w 20(b)(i) of the NDPS Act is set aside, and the accused is set at liberty. The fine amount, if any, remitted shall be returned forthwith.

This appeal is allowed.”

40. Mr Khan to prove that appellant was not the exclusive owner and not even cultivator of the property, he again relied upon the judgment reported in **2009 SCC Bombay 897 in the case of Shahaji Mattapattil and others Versus State of Maharashtra**, more particularly paragraph nos. 30 and 31, which read as under :

“31. In this case, it was the duty of the prosecution to determine who was in actual possession of the said

land. He might have been the owner or the person who had taken the said field on lease. Then, if the appellants had been employed by him for the illegal act of cultivating cannabis plants, they would have been liable. None of the villagers who might have been witnessing labourers in the said field since the beginning were examined. Why Rushi Nale maintained silence for a pretty long period is not explained. The same is the case with Sattyam. Even Talathi Kishor Tiple, P.W. 4, might have been to spot earlier to the raid, but he also did not take any action. As such, the case of the prosecution against the appellants appears to be of thick suspicion, but suspicion, however strong, can not take the place of proof. I have already pointed out above that the property in this case was not produced before the trial court; therefore, in view of the judgment of the Apex Court cited above, the appellants cannot be convicted.

32. *In such cases, ownership of the land or land being in possession of the accused has to be established. As stated above, this fact is not established. The charge against the appellant is for cultivating cannabis plants and for possession of ganja seeds. Admittedly, ganja seeds were found in the tin shed. The exclusive possession of the said shed can not be said to be that of all the appellants, unless the same is established. No doubt it is alleged that these*

appellants were residing in the same hut. But the fact remains that there is no clinching evidence on record about their actual residence in the said hut. Thus, possession of Ganja seeds cannot be attributed to any of the accused.”

41. The judgment reported in **2009 ALL MR (Cri) 357** in the **case of Rupsing Gopal Barela Versus State of Maharashtra**, is also relied upon, more particularly, paragraph nos. 10, 11 and 12, which read as under :

“10. It is true, even if the land belonged to the Forest Department, physical possession or control needs to be gone into, requiring proof thereof. There was absolutely no evidence from the adjoining neighbour, or persons in the vicinity having seen the Accused either cultivating the field or cultivating Ganja plants. Nobody from the forest department came forward armed with any document to corner the Accused for illegal possession.

11. There is no revenue record to support the prosecution's claim of possession by the accused. The term 'possession' has several angularities and one need not accept that the Accused had caused encroachment on the Government land. It is difficult to digest that the Accused had a domain or exclusive conscious possession. The initial burden to prove possession is on the prosecution, and then only, the applicability of the

presumption cast under Section 54 of the N.D.P.S. Act can be put into acceleration. The word 'possession' naturally signifies lawful possession. There can be no possession without intention or consciousness. The agricultural field could not be said to be exclusively or consciously controlled by the Accused.

12. In the matter of Avtar Singh and Others Vs. State of Punjab, reported in A.I.R. 2002 SC 3343, the Hon'ble Lordships were dealing with the concept of possession in a matter under the Narcotic Drugs and Psychotropic Substances Act, in paragraph 6, have observed thus :

“Possession is the core ingredient to be established before the accused can be subjected to the punishment under Section 15. The word 'possession' no doubt has different shades of meaning, and it is quite elastic in its connotation. Possession and ownership need not always go together, but the minimum requisite element that has to be satisfied is custody or control over the goods. In the instant case, bags containing poppy husk were recovered from the vehicle in which the accused were travelling. One accused was driving the vehicle loaded with bags of poppy husk. The other two accused were sitting on the bags placed in the truck. As soon as the police stopped the vehicle, one person sitting in the cabin beside the driver, and another person sitting in the back of the truck, fled. No investigation has been

directed to ascertain the role of each accused or the nexus between the accused and the offending goods. On such evidence, it cannot be said that the three appellants, one of whom was driving the vehicle and the other two sitting on the bags, had custody or control of the bags containing poppy husk. It is difficult to reach such a conclusion beyond a reasonable doubt. The persons who were merely sitting on the bags in the absence of proof of anything more cannot be presumed to be in possession of goods. True, their silence and failure to explain the circumstances under which they were travelling in the vehicle at odd hours is a strong circumstance against them. But, the fact remains that in the course of examination under Section 313, Cr.P.C., not even a question was asked that they were the persons in possession of poppy husk placed in the vehicle. In this state of things, it is not proper to raise a presumption under Section 114 of the Evidence Act, nor is it safe to conclude that the prosecution established beyond a reasonable doubt that the appellants were in possession of poppy husk which was being carried by the vehicle.”

42. Lastly, a judgment of Bombay High Court reported in **2017 (2) DC (Narcotics) 391** in the case of **Vilas Bapurao Deshmukh Versus State of Maharashtra**, more particularly paragraph nos. 10 and 11, is also reproduced here :

“10. No doubt, the prosecution has relied upon 7/12 extract of the field Survey No. 3. However, the said 7/12 extract reveals that the land was in possession of four persons, namely, Mangesh, Madhaorao, Vilasrao, and Smt. Nalinibai W/o. Kesharao Deshmukh. Thus, the 7/12 extract does not indicate that the appellant was in the exclusive possession of the field, nor does it indicate that he was exclusively cultivating the field bearing survey no. 3.

11. Now coming to the testimony of Karbhari (PW6), who is the Circle Inspector, he has drawn the sketch map of survey no.3. According to P.W.6, on 17.02.2003, he was requested by Tahsildar, Mehkar, to draw a sketch map of survey no.3. Accordingly, he proceeded to the village Warwand. He proceeded to that field along with Kotwal and Talathi. In their presence, he drew the sketch map (Exhibit 36). During his extensive cross-examination, PW 6 admitted that he was not present when the raid was effected. According to PW 6, he learned the exact location of the incident from the Naib Tahsildar. He, however, admitted that while drawing the sketch map, the Naib Tahsildar was not present, and he did not accompany him to the field. PW6 admitted that even the owner of the field was not present when the sketch map was drawn. According to him, some female members of the appellant's family were present. However, he had not obtained their

signatures on the sketch map to prove their presence. PW 6 deposed that Kotwal and Talathi had given the particulars regarding the exact place of the incident to him. Interestingly, the statements of Kotwal and Talathi were not recorded by the investigating agency. Significantly, the place from where the Ganja plants were uprooted is also not indicated in the sketch map (Exhibit 36).”

43. The gist of the aforesaid judgment is that the prosecution is under an obligation to prove that it was the accused who was cultivating the land.

44. It is necessary to mention here that none of the witnesses examined by the prosecution have stated that it was the applicant who was cultivating the Cannabis plants. The contention of the prosecution that it was the appellant who had shown the spot of incident, where Cannabis plants were planted, clearly amounts to an admission and the material, is therefore, enough to about conviction, is without any substance. The law prescribes the procedure for recording the confession of the accused. The statement made before the police, in the facts and circumstances of the case, will not lean in favour of the prosecution. At this juncture, it is further necessary to mention here that the burden of proof lies on the prosecution and not on the defence. Even for raising the

presumption under the provision of Section 54 of Narcotic Drugs and Psychotropic Substances, Act, the prosecution will have to prove the foundational facts. It is further necessary to mention here that the prosecution has also not proved its case beyond reasonable doubt. Hon'ble Apex Court in case of **Zainul Versus The State of Bihar, 2025 SCC Online SC 2152**, more particularly in paragraph no. 81 has observed as under:

“81. In Ramakant Rai v. Madan Rai, reported in (2003) 12 SCC 395, this Court explained the meaning of “reasonable doubt”. It means doubts that are free from abstract speculation, not a result of an emotional response, which are actual and substantial doubts on the guilt of the accused person, and not vague apprehensions. It cannot be an imaginary, trivial or a possible doubt, but a doubt based upon reason and common sense. The relevant observations have been reproduced hereinbelow:-

“23. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to “proof” is an exercise particular to each case. Referring to (sic) of probability amounts to

“proof” is an exercise, the interdependence of evidence and the confirmation of one piece of evidence by another, as learned author says : [see The Mathematics of Proof II : Glanville Williams, Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342)]

“The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other.”

24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the

evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

*25. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of the administration of criminal justice. This position was illuminatingly stated by Venkatachaliah, J. (as His Lordship then was) in *State of U.P. v. Krishna Gopal* [(1988) 4 SCC 302 : 1988 SCC (Cri) 928 : AIR 1988 SC 2154] .”*

45. If the aforesaid mandate of the law is taken into consideration, it would be crystal clear that sufficient evidence was not brought on the record to show that it was the appellant, who had cultivated the Cannabis plants. Further in statement recorded under

Section 313 of the Cr.p.c., accused has categorically stated that he was not the owner of the property and did not cultivate the plants. Though it was not necessary for the prosecution to prove the possession and the ownership of the land but it could have very well proved the cultivation by the accused. The positive evidence was not brought on the record and asking the accused to prove that he was not cultivating the property would amount to putting negative burden on him, which would not be in accordance with the principles of criminal jurisprudence, in the facts of the case.

46. Repetition of the facts and law would only lengthen the judgment. Suffice it to say that there is nothing on record to connect the present appellant to the cultivation of the Cannabis plant. In that view of the matter, I find that the trial Court has not decided the core issue of the case. The prosecution has not proved the case beyond a reasonable doubt and, therefore, following order is passed :

ORDER

- i. Criminal Appeal is allowed.
- ii. The appellant/accused is acquitted for the commission of an offence punishable under Section 20 (a) (i) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

- iii. The judgment passed by the learned Additional Sessions Judge-2, Aurangabad, in Special Case No. 386/2022, is set aside.
- iv. The accused be set at liberty forthwith, if his custody is not required in any other proceedings.
- v. The fine amount, if deposited, shall be refunded to the accused.
- vi. Pending Criminal Application also stands disposed of.

(RAJNISH R. VYAS, J.)