

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

CRIMINAL APPLICATION (BA) NO.602/2024

Mohammad Jakir Nawab Ali

Vs.

The State of Maharashtra thr. P.S.O., P.S. Sonala, Dist. Buldhana

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.J. Mirza, Advocate for applicant
Shri A.J. Gohokar, APP for non-applicant/State

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20/09/2024

The present application is moved by the applicant under Section 439 of the Code of Criminal Procedure in respect of Crime No.263/2021, registered at Police Station Sonala, District Buldhana for the offences punishable under Section 8(c), 20(b) (ii)(c), 22 and 29 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 Local Crime Branch Officer, Buldhana, who received a secrete information that one person in a car is coming towards Tunki Shivar by Warwat Bakal to Tunki Road near the field of Dharmendra Mahadev Ingle transporting the contraband articles ganja. Therefore, in presence of the panchas, he had conducted the raid at the field of Dharmendra Mahadev Ingle and during the said raid, one white

colour Maruti Swift Car bearing registration No.DL-10-AE-4252 was searched. During the search, it was found that the applicant was driving the said car and contraband 'Ganja' weighing about 50 kg. was found in the back seat of the said car. The description of the contraband articles was of greenish colour seeds, leaves, stalk, stems and roots and other parts of the plant. Accordingly, in presence of the panchas, the samples were obtained and forwarded to the Chemical Analyser. It is further alleged that the applicant was carrying the said contraband articles and he was found in possession of the said articles. Accordingly, the muddemal was also forwarded to the inventory. The inventory was conducted. After completion of investigation, the charge sheet was submitted.

3. Learned Counsel for applicant submitted that the applicant is suffering from HIV positive and his health condition was deteriorating day by day. Though, he is arrested on 07/12/2021, there is no substantial progress in the trial and charges are yet to be framed. Thus, there is an inordinate delay in the commencement of the trial and, therefore, the right of the speedy trial is also affected. He further submitted that the contraband articles which are seized from the car, which was in possession of the present applicant, is also not a Ganja within the definition under Section 2(iii) (b) and (c) as the leaves, seeds, stems and stalks are excluded from the definition of Ganja. The

mandatory provisions are also not followed. The rigour under Section 37 is not attracted and, therefore, the application deserves to be allowed.

4. Learned APP for the State strongly opposed the said application and submitted that the CA report discloses the contraband articles which was forwarded is Ganja, which is sufficient to show that the contraband articles which is seized, is within the definition of Ganja. As far as the mandatory provisions are concerned, which are followed by the investigating agency. It is further submitted that now the CA reports are also received and trial can be commenced at any stage. In view of that the application deserves to be rejected.

5. 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) and (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.

6. 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. In the case in

hand, as seen from the FIR and the investigation papers, the quantity of 50 kg. of ganja was seized from the vehicle. However, the inventory certificate as well as the recitals of the FIR, the panchnama shows that the seized articles were leaves, seeds, stems and stalks. It appears that when the gunny bag was measured with the help of weighing machine produced by the Measurer, the contraband articles containing leaves, seeds, stems and stalks. Admittedly, none of the investigating papers shows that either these materials were segregated and thereafter weighed.

7. The above state of affairs would make it clear that there is nothing on record to prima facie show that before carrying weight of the seized plant of ganja, the investigating officer had segregated the seeds or the other parts of the plant in order to ascertain the exact quantity of ganja. In fact, none of the paper mentions that the said contraband articles which were seized includes the flowering or fruiting tops of cannabis plant. This fact becomes further clear from the panchanama also. The seizure panchanama also nowhere shows that the flowering or fruiting tops of cannabis plant were, in any other manner, were along with the contraband articles seized from the possession of the present applicant. Thus, on perusal of the material on record shows that what was seized was plant i.e. leaves, seeds, stems and stalks and without separating the same, the ganja was weighed.

As the seized material was not weighed and after separating the leaves and the other parts and moreover it is not along with the flowering or fruiting tops. Therefore, it is difficult to ascertain whether quantity can be said to be commercial.

8. In view of Section 37 of the NDPS Act, the power to release an accused on bail subject to the limitation contained in Section 439 of the Cr.P.C. coupled with the limitation contemplated in view of Section 37 itself, mainly (1) there are reasonable ground for releasing that accused is not guilty of such offence, (2) that he is not likely to commit such offence while on bail. The expression reasonable ground means something more than prima facie ground it contemplates substantial probable cause for believing that the accused is not guilty of the offence.

9. 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. Another aspects of the matter is whether applicants could be said to have been charged for dealing in commercial quantity of the contraband articles. The inventory certificate mentions of the plant of ganja, which is of greenish colour and it nowhere shows that

it includes the flowering or fruiting tops. If at all the seeds and other parts were to be counted as fruiting part, it ought to have been excluded and weighed separately to measure the quantity of ganja.

10. Thus after perusal of the investigating papers, prima facie, the material complied with the charge-sheet, it is difficult to accept that the alleged prohibited substance is within the definition of ganja under the NDPS Act. Since the only flowering or fruiting tops of cannabis plant are classified as ganja, in absence of the said substance being seized from the applicant, *prima facie* involvement of the applicant is difficult to hold. Moreover, there is inordinate delay in conducting the trial and, therefore, the right of the accused of speedy trial is 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:

ORDER

- i) The application is allowed.
- ii) The applicant- Mohammad Jakir Nawab Ali,

be released on bail in connection with Crime No.263/2021, registered at Police Station Sonala, District Buldhana, for the offences punishable under Section 8(c), 20(b)(ii)(c), 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on executing PR bond of Rs.50,000/- with one surety in the like amount.

iii) The applicant shall report to the concerned Police Station once in a month on first Saturday between 11.00 a.m. to 1.00 p.m.

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 himself in similar type of activities. On contravention of the above said condition, the bail granted to the present applicant deserves to be cancelled.

vi) The trial Court shall not be influenced by the observations of this Court, which is only for the purpose of the bail.

11. The present application is disposed of.

JUDGE

R.S. Sahare