
(2024) 12 BOM CK 0033

Bombay High Court (Aurangabad Bench)

Case No: Bail Application No. 2009 Of 2024

Pravin Anil Narbhavar

APPELLANT

Vs

State Of Maharashtra And
Another

RESPONDENT

Date of Decision: Dec. 19, 2024

Acts Referred:

- Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 8(c), 20(b)(ii)(c), 21, 22, 37, 52A

Hon'ble Judges: Arun R. Pedneker, J

Bench: Single Bench

Advocate: Anju Ajay Fulfagar, A.A.A. Khan

Final Decision: Dismissed

Judgement

Arun R. Pedneker, J.",

1. Heard Mr. A.A. Fulfagar, learned counsel for the applicant and Mr. A.A.A. Khan, learned APP for the respondents/State. Mr. G.O. Wattamwar,"

the learned APP and Mrs. V.S. Choudhari, the learned APP have also assisted the Court in dealing with legal submissions.",

2. The applicant is seeking bail as he was arrested on 18.4.2024 in connection with Crime No. 280/2024 dated 18.4.2024 registered with Nawapur,

Police Station, District Nandurbar for the offences punishable under sections 8(c), 20(b)(ii)(c) and 22 of the Narcotic Drugs and Psychotropic",

Substances Act, 1985 (hereinafter referred to as "N.D.P.S. Act" for short).",

3. The case of the prosecution in short is that on 17.4.2024 at about 6.30 p.m. at inter-State check post on Nandurbar to Dule Road, accused Nos. 1",
and 2 were found travelling in Mahindra Pickup Bolero vehicle and they were found in possession of two blue plastic bags containing Ganja of 1.977,
k.g. and 2.009 k.g. in each. It is the case of the prosecution that the accused Nos. 1 and 2 had procured the above Ganja from accused No. 6/present,
applicant. Present applicant was found storing 77.96 k.g. Ganja which came to be seized under seizure panchanama. Some of the accused are,
absconding.,

4. The present applicant had filed Bail Application No. 827/2024, which was withdrawn on 1.7.2024. Thereafter, chargesheet was filed on 14.7.2024.",

After filing of the chargesheet, again bail application was filed by the applicant below Exh. 16 in Special Case No. 20/2024 before the Sessions Court.",

The learned Sessions Court rejected the bail application of the applicant on 29.8.2024. Hence, the present bail application is filed by the applicant for",

bail. The applicant was arrested on 18.4.2024 and is of 27 years of age.,

5. The contention of the applicant is that under the seizure panchanama muddemal property containing Ganja was recovered which contains seeds",

leaves, steams of cannabis plant. The contention of the applicant is that since the roots, stems and leaves are not separated from Ganja, the weight of",

sample is 77 k.gs. The learned counsel submits that the flowering tops (cannabis) is to be separated from the seeds, leaves and steams and if such",

separation is done, the quantity recovered would not be commercial quantity and it would come within intermediate quantity if not less than that. The",

learned counsel for the applicant has placed reliance on following judgments.,

(i) Order dated 20.9.2024 passed by Nagpur Bench of this Court in Criminal Application (BA) No. 602/2024 in the case of Mohammad Jakir Nawab,

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

(ii) Order dated 14.6.2024 passed by this Court in Bail Application No. 763/2024 in the case of Sidique Farook Shaikh Vs. The State of Maharashtra.,

(iii) Order dated 24.8.2023 passed by this Court in Bail Application No. 1363/2023 in the case of Subhash Baburao Patil Vs. The State of,

Maharashtra.,

6. The second contention of the applicant is that the samples were drawn on the spot and not in presence of the Magistrate, as such, there is violation",

of section 52-A of the N.D.P.S. Act. The learned counsel relied on following judgments.,

(i) Simarnjit Singh Vs. State of Punjab reported in 2023 SCC OnLine SC 906.,

(ii) Order passed by this Court in Bail Application No. 1371/2024 in the case of Mirza Mohsin Beg Vs. The State of Maharashtra.,

7. Per contra, the learned APP submits that applicant is chargesheeted for the offences punishable under sections 8(c),20(b)(ii)(c) and 22 of N.D.P.S.",

Act. As regards first submission of the applicant is concerned, the learned APP submits that since the recovered bags containing 77.96 k.g. of Ganja",

along with leaves, stems and small cannabis, it is not possible to separate the stems and leaves from Ganja and that the entire quantity of seized",

material has to be taken as commercial quantity. For that purpose, the learned APP relied upon the following judgments :-",

(i) Order dated 16.1.2024 in CRM-M-44787/2023 passed by the Punjab and Haryana High Court in the case of Sanjay Upadhy Vs. State of Punjab.,

(ii) Order dated 16.3.2022 passed by this Court in Bail Application No. 1725/2021 in the case of Ajay Vitthal Shriram Vs. The State of Maharashtra.,

(iii) Order dated 7.12.2022 passed by Karnataka High Court in Criminal Petition No. 11678/2022 in the case of Sri Rangappa Vs. State and Anr.,

(iv) Judgment dated 22.4.2020 delivered by the Honâ€™ble Supreme Court in Criminal Appeal No. 722/2017 in the case of Hira Singh and Anr. Vs.,

Union of India and Anr.,

8. As regards the submission of violation of section 52-A of N.D.P.S. Act, the learned APP submits that the samples are drawn by the police on the",

spot, so also samples are drawn before the Magistrate and both samples are sent to chemical analysis and as such, there is no violation of section 52-",

A of N.D.P.S. Act. He also relies upon following judgment.,

(i) Judgment dated 27.9.2023 delivered by this Court in Bail Application No. 54/2023 in the case of Mukesh Rajaram Choudhari Vs. The State of,

Maharashtra.,

9. Considering the submissions of parties, this Court is called upon to decide the following questions :-",

(i) What is Ganja ?,

(ii) If the recovered "Ganja" contains neutral material like stems and roots, whether the "Ganja" has to be separated from stems and roots to ascertain the",

quantity of "Ganja" so as to determine the "small, intermediate or commercial quantity" for the purpose of section 20(b)(ii) and section 37 of N.D.P.S. Act ?",

(iii) In the present case, whether there is violation of section 52-A of N.D.P.S. Act ?",

10. The first question that arises for consideration of this Court is "what is "Ganja" ?. For that purpose, it is necessary to examine the",

definition of "Ganja" given in section 2(b) of N.D.P.S. Act, which reads as under :-",

"(b) ganja, that is the flowering of 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;"

11. Bare perusal of the definition of the word "Ganja" would indicate that Ganja is the flowering of fruiting tops of the cannabis plant (excluding,

the seeds and leaves when not accompanied by the tops). Thus, the flowering of fruiting tops of the cannabis plant alone is considered to be",

"Ganja" except when it is accompanied by the tops when the seeds and leaves are also included in the definition of "Ganja". This is the,

consistent view of this Court in all the above judgments cited by the parties at para 5 and 7 above.,

12. In the instant case, from perusal of the Certificate of Inventory as per section 52-A of the N.D.P.S. Act dated 23.4.2024 of the Judicial",

Magistrate, First Class, it is seen that the contraband seized from the applicant is as under :-",

"Thirdly, Muddemal "Article F/2, F/1 and F one Yellow Colour Plastic Sack and two small sample Khaki Paper pockets" came to be measured on electronic",

machine in present of panch witnesses with the help of electronic weighing machine owner Shri. Lalsing Aamnsing Rajpurohit. Yellow Colour Plastic Sack and two,

Article,Weight

F/2,24Kg 85 Gram

F/1,116 Gram

F,125 Gram

22. The Hon^{ble} Supreme Court in the case of the State of Himachal Pradesh Vs. Karuna Shanker Puri reported in 2022 LiveLaw (SC) 173,"

relying upon the judgment in the case of Hira Singh (supra) and in group of matters in Criminal Appeal Nos. 234-236/2022 has observed as under :-,

“b) The charas sample which was examined both for qualitative and quantitative test would not meet the principles laid down in respect of quantification of the,

drug, an aspect we may note stands covered by the judgment in Hira Singh (supra) opining that in the case of seizure of a mixture, the quantity of neutral substance",

is not to be excluded and to be taken into consideration along with the actual contents of weight of the offending drug while determining the small or commercial,

quantity.”

23. Applying the law as laid down in the judgment of Hira Singh (supra) to the facts of the present case, it is to be noted that although there is neutral",

material in the form of stems, leaves and roots mixed with the seized contraband “Ganja”, the mixture is composite and the investigating Officer",

or the Chemical Analyst cannot separate the Ganja from the neutral material and only compare the weight of the “Ganja” separately. In the,

case of Hira Singh (supra), it was observed that neutral material cannot be separated and thus, the total weight is required to be taken into",

consideration for the purpose of determining the “small quantity, intermediate quantity or the commercial quantity”.

24. The Hon^{ble} Supreme Court in the case of Hira Singh (supra) has interpreted the section 21 of N.D.P.S. Act and has observed that section 21,

is not stand-alone provision. Section 20 (b)(ii) of the N.D.P.S. Act is identical to section 21 of N.D.P.S. Act and has to be interpreted in identical,

manner as section 21 of N.D.P.S. Act as has been interpreted in the case of Hira Singh. For ready reference, section 20(b)(ii) and section 21 of the",

N.D.P.S. Act are quoted below :-,

“20. Punishment for contravention in relation to cannabis plant and cannabis.”
Whoever, in contravention of any provisions of this Act or any rule or order",

made or condition of licence granted thereunder :-,

(a) " ,

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

(i) " ,

(ii) where such contravention relates to sub-clause (b),",

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine, which may extend to ten thousand rupees, or with",

both;,

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and",

with fine which may extend to one lakh rupees;,

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall",

also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees;

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees."

21. Punishment for contravention in relation to manufactured drugs and preparations." Whoever, in contravention of any provision of this Act or any rule or",

order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any",

manufactured drug or any preparation containing any manufactured drug shall be punishable,-",

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten",

thousand rupees, or with both;"

(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may",

extend to ten years and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to",

twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees;

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees."

The Hon^{ble} Supreme Court in the case of Hira Singh (supra) has observed that the punishment part in drug trafficking is an important one, but its",

preventive part is more important. Therefore, prevention of illicit traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 came to be",

introduced. The aim was to prevent illicit traffic rather than punish after the offence was committed. Therefore, the provisions of NDPS Act are",

required to be interpreted keeping in mind the object and purpose of N.D.P.S. Act; impact on the society as a whole and the Act is required to be,

interpreted literally and not liberally which may ultimately frustrate the object, purpose and preamble of the Act. Therefore, the interpretation of the",

relevant provisions of the statute canvassed on behalf of the accused that quantity of neutral substance is not to be taken into consideration and it is,

only actual content of the weight of the offending drug, which is relevant for the purpose of determining whether it would constitute "small quantity",

or commercial quantity", cannot be accepted.",

25. Considering the judgment of the Supreme Court in the case of Hira Singh (supra), I am of the considered view that the contraband seized",

"Ganja" which is mixed with stem, roots etc. cannot be separated from the flowering or fruiting tops of the cannabis plant so as to ascertain the",

weight of the seized contraband. Ganja if mixed with neutral material in terms of the stem, leave, roots, cannot be separated and has to be considered",

as whole for the purpose of section 20(b)(ii) of N.D.P.S. Act for determining whether the quantity seized is small quantity, intermediate quantity or the",

commercial quantity. Since the larger bench of the Supreme Court in the case of Hira Singh (supra) has conclusively dealt with the issue that the,

neutral material cannot be separated from the offending narcotic or psychotropic drug, I have not dealt with any other judgments of this Court on this",

issue, indicating to the contrary. In the instant case, the quantity seized is 77.96 k.g. and thus, there cannot be any doubt that the seized quantity is the",

commercial quantity for which rigour of section 37 of N.D.P.S Act comes into play.,

26. As regards the submission of the learned counsel for the applicant that there is violation of section 52-A is concerned, that the sample is drawn on",
the field and not before the Magistrate. The counsel for the applicant has not refuted the submission of the APP that the sample was also drawn,
before the Magistrate and both the samples are send for chemical analysis and thus, this question would be matter of trial if there is any violation of",
section 52-A of the Act as the samples are also drawn before the Magistrate.,

27. In view of the discussion made above, I hold that no case is made out for grant of regular bail. The application is dismissed.",