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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 1405 OF 2022

Ramesh Bahan Badhe ..Applicant
Vs.
The State of Maharashtra .. Respondent

Mr. Amol P. Mhatre, for Applicant.
Ms. P. N. Dabholkar, APP for State.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 4, 2023

P.C. :

1. Heard learned counsel for the applicant and learned APP for State.
2. This is an application for bail in connection with C.R. No.I-167 of 2021 dated 30/08/2021 registered with Thane Nagar Police Station for the offences punishable under sections 8(c), 20, 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter "NDPS Act", for short).
3. The applicant is from the State of Orissa. The department received a secret information about a person

who would be carrying contraband substance i.e. ganja near Thane railway station. Accordingly, the search was carried out and the applicant was found in possession of 18 kgs. ganja. The raid was carried out on 30/08/2021 and immediately the applicant was arrested.

4. Learned APP vehemently opposed the application. She submits that the applicant is from Orissa and is not likely to attend the trial. There is every possibility of jumping bail. Reliance was placed on the decision of the Gujarat High Court in the case of ¹**Shirish Madhavdas Parikh Vs. State of Gujarat** to place emphasis on the principles and factors which requires consideration at the stage of trial cannot be emphasised when an application for bail during the pendency of the trial is presented. She further submitted that there was a large quantity of ganja which was seized from the applicant and that with a view to save our country from the evil of these activities, it is necessary to deal with the applicant strictly. According to her if the applicant is set free, it is likely that he will indulge in the same activity and do enormous harm to the Society.

1 1990 (1) GLR 617

5. The applicant is in custody for more than 1 year and 4 months. My attention is drawn to the FIR wherein it is recorded that green leaves which had strong smell were found in gunny bag. Section 2(iii)(b) of the NDPS Act provides "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." The FIR and the panchnama record that what was found in possession of the applicant were leaves which were suspected to be ganja. No reference to flowering or fruiting tops is made.

6. Pursuant to the order passed by this Court, the chemical analysis report was called indicating the results of analysis of the leaves which were sealed and sent for the purpose of analysis. In the said report, the description of the articles contained in the parcel is mentioned as flowering/fruiting tops with greenish leaves and stalks in two separate press sealed polythene bags put in two separate envelopes. The results of analysis are that the samples are ganja. However, as per the FIR and

panchanama what was found are green leaves and there is no reference to the flowering of fruiting tops of cannabis plant.

7. Learned counsel for the applicant relied upon the decision of this Court in the case of ²**Ramesh s/o Rangrao Mohite Vs. State of Maharashtra** wherein it was held that the description of the ganja which was seized is only leaves and not the flowers or flowers with leaves. It is held that this description does not answer the definition of Narcotic Drugs as proved under section 2 of NDPS Act, which defines ganja.

8. For the reasons aforementioned, a case for releasing the applicant on bail is made out and also on the ground that the applicant is in custody for more than 1 year and 4 months with the possibility of trial concluding any time soon is remote. Moreover, there are no criminal antecedents against the applicant. The applicant is 21 years of age. There is nothing placed on record to infer that the applicant is likely to commit offence of similar nature in future. By imposing certain stringent conditions, the applicant can be

² 2006 ALL MR (Cri) 1754

released on bail. Hence, the following order.

ORDER

- (a) The application is allowed.
- (b) Applicant- Ramesh Bahan Badhe shall be released on bail in connection with C.R.No.I-167 of 2021 registered with Thane Nagar Police Station, on his furnishing P.R. Bond of Rs.50,000/- with one or more local sureties in the like amount.
- (c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.
- (d) The applicant shall attend the concerned Police Station once in a month i.e. on first Monday of every month between 11.00 a.m. and 1.00 p.m. till the trial is over.
- (e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

8. The application is disposed of.

(M. S. KARNIK, J.)