

Bail Application in NDPS. S. Case No. 13/2024
State of Maharashtra Vs. Abdul Gafur Abdul Rashid & others
(CNR NO. MHBUE20-000238-2024)

ORDER BELOW EXH. 39
(Passed on this the 24th day of December, 2025)

01] Applicant No. [1] **Abdul Gafur Abdul Rashid and [2] Mohd. Aabid Mohd. Sadique** have filed regular bail application under Section 483 of The Bharatiya Nagarik Suraksha Sanhita in connection with Crime No. 578/2023 registered with Police Station, Mehkar for the offences punishable under Sections 8(c), 20(b)(ii)(c), 25 of the Narcotic Drugs and Psychotropic Substances Act.

02] It is the case of prosecution that on 06.10.2023, informant/ P.S.I. Sachin Kanade and other police staff of L.C.B. Buldhana were on patrolling duty within the jurisdiction of Mehkar town. At that time, P.S.I. Shrikant Jindamwar received secret information that contraband marijuana is being transported on Samruddhi Highway, from Nagpur towards Mehkar in Truck bearing registration No. MH-26/BE-0851. After obtaining necessary permission from higher authority, informant and other police staff along with panchas reached at Exit Gate No. II in Sabra Shiwar.

03] It is further contended that at about 10.05 hours, raiding party noticed Truck No. MH-26/BE-0851 coming from Nagpur side. Raiding party stopped that truck by giving signal. Two person were sitting in that truck. Thereafter, in presence of panchas, search of said Truck was taken. During search, three travel bags and

one sack were found on the ash inside the truck. During search of those bags and sack, total 39 pockets containing in all 43 k.g. 200 gram contraband Ganja recovered. Accordingly, raiding party seized Ganja and taken those persons in custody. Thereafter, informant reached to Police Station, Mehkar and lodged report on behalf of the State.

04] Learned counsel Mr. Ajay Dinode vehemently argued that applicants have filed third bail application. He further submitted that investigation in this crime is completed and charge-sheet has been filed before this Court. The applicants are behind the bar from last two years one month. Two material witnesses are examined and they have not supported to the case of prosecution and there is no legal evidence brought on record against the applicants. There are other witnesses named in list, which will take much long time to examine them. There would be delay of 5 to 6 years for concluding the trial. Therefore, there is change in circumstances for seeking bail on fresh ground.

05] He further submitted that applicants were driver and cleaner / conductor on truck bearing registration No. MH-26/BE-0851. They are daily wages labours. They were working on various truck as per the order/ direction of owners of that truck. The applicants being driver, cleaner /conductor on truck have to follow the order of truck owner, while they are on journey. It is further submitted that applicants have no exclusive control, custody or conscious possession over the truck. As per statement of the

applicants before investigating agency, the owner of truck directed truck driver to take some bags in the truck. The applicants were not having knowledge about contents of bags and they were not in conscious possession. It is further submitted that bags were kept at backside of the truck above the heap of black ash. The applicants were not having knowledge about contraband articles and therefore, they stopped their vehicle on the signal of raiding party. If the applicants would have knowledge about Ganja, they would try to flee away from the spot of incident. It is further submitted that no incriminating article was found in physical and actual possession or in the custody of the applicants. The applicants made submission before the learned J.M.F.C., Mehkar on the day of production that they are just driver and conductor of the truck. The applicants have fully co-operated to investigating agency during remand and investigation, but no link or connection found with the commission of this crime.

06] It is further submitted that the investigating agency has prepared bogus documents of investigation. Learned counsel pointed out registration number written on various documents filed in the charge-sheet at page Nos. 15,16,17,34,35,40. It is further submitted that mandatory provision of Sections 42, 50, 52(A) of N.D.P.S. Act has not been complied with by concerned police official and therefore, it creates doubt about seizure of contraband Ganja. It is further submitted that non-compliance of mandatory provisions vitiate the entire prosecution case and therefore, no prima-facie

case is made out against the applicants.

07] It is further submitted that as per F.I.R. and remand papers alleged substance is “Greenish colour leaves, flowers, stalks, stems, branches and seeds” and that substance do not fall under the definition of ‘Ganja’ as provided in Section 2(iii)(b) of the N.D.P.S. Act. Hence, there is nothing on record to show actual or exact weight of “Flowering of fruiting tops of cannabis plant” which can fall under the definition of “Ganja”. Hence the case against the applicants do not fall under “Commercial Quantity” and therefore, Section 37 of the N.D.P.S. Act is not applicable or attracted to the facts of present case. On these grounds learned counsel prayed to release the applicants/ accused on grant of bail. In support of this submission, learned Advocate for applicants/accused relied on the following case laws -

- [01] Krushna S/o Ramdas Gond & Anr. Vs. State of Maharashtra, in criminal Application (BA) NO. 414/2021, Decided on 24.06.2021.**
- [02] Rahul Bhimrao Pawar Vs. The State of Maharashtra, in Criminal Bail Application No. 2977 of 2021, decided on 03.01.2022.**
- [03] Santosh Sambhaji Todkar Vs. State of Maharashtra, in Bail Application No. 196/2021, Decided on 15.12.2021.**
- [04] Ramesh Prakash Jadhav Vs. State of Maharashtra, in Bail Application No. 1329/2021, Decided on 30.11.2021.**

- [05] Daryappa Kushaba Akkiwad Vs. The State of Maharashtra, in Criminal Bail Application No. 3663/2021, Decided on 03.01.2022.
- [06] Manoj Rupsing Solanki (Barela) Vs. The State of Maharashtra, in Bail Application No. 1392/2020, Decided on 16.12.2020.
- [07] Sachin Dilip Bagul Vs. The State of Maharashtra, in Bail Application No. 2538/2021, Decided on 03.01.2022.
- [08] Praveen Supda Chavan & Another Vs. State of Maharashtra, through its PS, Risod, District Washim, in Criminal Application (BA) No. 101/2023, Decided on 23.06.2023.
- [09] Chandrabhan Janardhan Yadav Vs. State of Maharashtra, in Criminal Bail Application No. 2254/2024, Decided on 04.03.2025.
- [10] Mohd Muslim @ Hussain Vs. State (NCT OF DELHI), reported in 2023 INSC 311.

08] Per contra learned A.P.P. Mr. S. B. Ingale strongly opposed bail application relying on the say of Investigating Officer. He submitted that previous bail application of the applicants were rejected after filing of charge-sheet and therefore, there is no change in the circumstances to entertain this bail application on the same grounds. He further submitted that two accused in this crime are absconding from the date of incident. He further submitted that raiding party has seized Black-greenish fruiting tops with seeds,

wet, pungent smell “Gajna” weighing about 43.200 k.g. seized from arrested accused person. As per definition of Gajna as provided in Section 2(iii)(b) of the N.D.P.S. Act, flowering and fruiting tops of cannabis plant accompanied with seeds and leaves is a Ganja. Therefore, an offence against the applicants in respect of commercial quantity of Gajna is proved and he is not entitled to be released on bail as per Section 37 of N.D.P.S. Act. Learned A.P.P further submitted that facts of reported Judgments relied on by the side of applicants and facts of the present case are different, therefore, these Judgments are not helpful to the applicants. Lastly it is submitted that the prosecution has examined two material witnesses and there is progress in trial. Therefore, application is liable to be rejected. To strengthen the argument, learned A.P.P placed his reliance on the following Judgments viz...

[01] Narcotics Control Bureau Vs. Kashif, in Criminal Appeal No. 5544/2024, Decided on 20.12.2024.

[02] Pravin Anil Narbhavar Vs. The State of Maharashtra + 1, in Bail Application No. 2009/2024, Decided on 19.12.2024.

09] In the context of rival submission of either side, I have carefully gone through relevant provisions of the N.D.P.S. Act, Judgments relied on by either side and documents filed in the charge-sheet. Pursuant to case papers it appears that previous bail applications of the applicants are rejected by this Court and my learned predecessor after filing of charge-sheet. Pursuant to bail

orders it appears that this Court and my learned predecessor have discussed definition of Ganja, mandatory compliance of Sections 50, 50 (1) and rejected the application of the applicant as he failed to clear twin test enshrined in Section 37 of the N.D.P.S. Act.

10] Now the applicants are seeking bail on four grounds. Firstly, applicants were not in conscious and actual possession of alleged Ganja. They were driver and cleaner on truck and contraband Ganja was laying in bags at backside of the truck. Applicants were following the order of truck owner and therefore, they were not in conscious and actual possession of the Ganja. In this regard applicants placed their reliance on the Judgment of **Manoj Solanki** and **Sachin Bagul** cited supra. In the Judgment of **Manoj Solanki**, contraband Ganja was found in dickey of the bus in which applicant was travelling as a passenger. In the case of **Sachin Bagul** name of applicant came in the confessional statement of co-accused and he was not having criminal antecedent. The facts of these reported cases are totally different with the facts of present case. In the present case defence side heavily relied on the statement of applicants recorded by police authority.

11] Statement of applicants speaks contrary to the defence of applicants. Statement of applicant driver discloses that he was truck driver of truck bearing registration No. MH-26/BE-0851. He was not cleaner or conductor of that truck. His statement further discloses that truck owner asked him to take travelling bags from one person and he will pay Rs. 10,000/- to him for transporting

purpose. It is significant to note here that no one will pay Rs. 10,000/- and no person will accept Rs. 10,000/- for transporting three bags in the truck. As per statement of the applicant he was getting Rs. 10,000/- for transportation of three bags, which indicates that he was having knowledge about the contents of contraband articles in the bags.

12] Secondly, the applicants are claiming bail on the ground that seized Ganja do not fall under the definition of “Ganja”. In this regard applicants have relied on the Judgments of **Rahul Pawar, Santosh Todkar, Ramesh Jadhav, Daryappa Akkiwad, Praveen Chavan** cited supra. All these Judgments are on the same line, describing the definition of Ganja. Per contra, learned A.P.P. has relied on the Judgment of **Pravin Narbhavar** to contradict the defence and contention of the applicants. Pursuant to reported Judgments cited by either side it appears that in the Judgment of **Pravin Narbhavar**, landmark Judgment of the Hon'ble Apex Court in respect of definition of ‘Ganja’ were considered by the Hon'ble Bombay High Court and relying on the Judgments of Apex Court opined in para No. 25 that

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.

13] In the present case quantity of seized Ganja is 43 k.g. 200 gram and thus there cannot be any doubt that seized quantity is commercial quantity for which rigour of Section 37 of N.D.P.S. Act comes into play. For these reasons Judgments relied on by the applicants will not helpful to them.

14] Thirdly, applicants are seeking bail on the ground of non-compliance of mandatory provisions of Sections 40,50, 52(A) and 57 of the N.D.P.S. Act. In this regard applicants relied on the Judgment of **Chandrabhan Yadav** cited supra. To the contrary, learned A.P.P. relied on the Judgment of **Narcotics Control Bureau Vs. Kashif** cited supra. Pursuant to the Judgment of **Chandrabhan Yadav** it appears that in that case application for inventory and form No. 5 were missing and therefore, bail was granted to the applicant in that case. However, in the present case Investigating Officer applied to J.M.F.C., Mehkar for inventory within period of 30 days of the

date of incident. Thereafter, inventory form, photographs were taken before the Magistrate and inventory certificate was issued by learned J.M.F.C., Mehkar. Therefore, facts of the present case differs from the case of **Chandrabhan Yadav**, cited supra.

15] More-so, as per the Judgment of **Narcotics Control Bureau Vs. Kashif** the Hon'ble Apex Court held in para No. 39 that

Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.

16] It is relevant to note here that as per Section 50 (1) of the N.D.P.S. Act notice was given to applicants/ accused asking them as to whether they wants to conduct their personal search in presence of Gazetted Officer. In fact Gazetted Officer and panch witnesses were present at the spot of incident. Therefore, there is no force in the submission of applicants/ accused that mandatory provisions of N.D.P.S. Act have not been complied with.

17] Lastly, the applicants are seeking bail on the ground

of delay in trial and placed his reliance on the Judgment of **Mohd Muslim @ Hussain** cited supra. In the present case charge has been framed against the applicants. Two material witnesses are examined by the prosecution. This means that there is progress in trial. The prosecution is ready and willing to conduct and finish trial as early as possible. Therefore, ratio laid down in the Judgment of **Mohd Muslim @ Hussain**, cited supra will not be helpful to the applicants.

18] On going through case papers it appears that the applicants were apprehended with Ganja of commercial quantity. Prima-facie case is made out against them. They have committed serious offence against the interest of public at large and society. Two accused person in this case are still absconding and therefore, if the applicants are released on bail, there is possibility of the applicants fleeing from justice. Hence, for the aforesaid reasons, bail application of the applicants is liable to be rejected.

With this, I proceed to pass following order.

- O R D E R -

Regular Bail application (Exh. 39) is rejected.

Place: Mehkar
Date : 24.12.2025

(Sagar K. Mungilwar)
Special Judge
Mehkar, Dist. Buldhana

CERTIFICATE

I affirm that the contents of this PDF file Order / Judgment are correct word to word as per the original.

Name of Court : Shri. Sagar K. Mungilwar
Special Judge, Mehkar,
Dist. Buldhana.

Name of Steno : Shaikh Imran Abdul Rauf,
Stenographer, Grade-1, Mehkar.

Date : 24.12.2025