

In the Court of Additional Sessions Judge, Wardha.

Special Case No. 110/2025

Suraj S/o Shankarsingh Chavhan + 01 ... Applicants

..V/s..

State of Maharashtra,
Through P.S.O., Wardha City ... **Non-applicant**

Order below Exh. 21
(Passed on 29th April, 2026)

1] The present bail application is filed under Section 483 of the BNSS, 2023, in Crime No. 1021/2025 registered at Police Station Wardha City, for the offences punishable under Sections 8(c), 20(b) (ii)(C), and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

The brief facts of the case are as under.

2] On the basis of secret information that some persons were carrying drugs in their suitcases, the police stopped a white coloured Maruti Swift car near the railway gate. Two persons were found in the car along with one suitcase. However, the driver of the car ran away from the spot along with the car. Three persons, including the applicants, were caught hold on the spot, and the suitcases found with them were searched after giving due introduction and complying with the necessary formalities. Upon search of the suitcases, ganja was found in the bags. The forensic team also confirmed that it was cannabis plant material, including green leaves, flowering tops, stems, and seeds. After completing the formalities under Section 50 of the NDPS Act, the suitcases were searched, and green leaves along with flowers, stems, and seeds

were found. On weighing, the bag was found to contain about 10.204 kg Ganja along with the plastic bag and 10.094 kg without the plastic bag. In another bag, green leaves along with flowers, stems, and seeds were found weighing about 10.128 kg along with the plastic bag and 10.017 kg without the plastic bag. Thus the total Ganja which was found weighed more than 20 kg. During personal search, mobile phones were also found which were seized. Upon inquiry, it was disclosed by the applicants that the contraband articles was brought from the Madan R/o Orissa. The entire material was seized and samples were prepared. The present applicants were arrested. The entire material and the accused persons, including the applicants, were brought to the police station. The contraband articles was sent to the JMFC for the purpose of inventory. After detailed investigation, the charge-sheet has been filed. The applicants are before this Court for bail.

3] According to the applicants, they are falsely implicated and has no concern with the alleged offence, and has made an accused only on the basis of the statement of a co-accused. Furthermore, it is contended that the contraband recovered in the present crime was not weighed separately, and as per the definition of "ganja," only the flowering or fruiting tops of the cannabis plant are included. If separated, the contraband recovered would not fall within the category of commercial quantity. It is further contended that the investigation is complete and no fruitful purpose would be served by keeping the applicants in behind bars. It is also submitted that one of the co-accused has already been released on bail.

4] The application is opposed by the prosecution by filing a say at Exhibit 22 on the ground that all the accused were found in possession of commercial quantity of ganja and there is huge

evidence available against them. It is also transpired that the ganja was brought by accused from Madan R/o Orissa. Under these circumstances, the applicants may not be released on bail.

5] I have perused the application and the say, and heard learned APP and counsel for the applicants. From the case diary, it appears that, although as per the FIR the ganja recovered from the applicants is shown to be 20.11 kg. The Investigating Officer has not separated the stems, flowering tops, and seeds, and has weighed them collectively and not separately. Therefore, according to the learned counsel for the applicants, the ganja recovered from the applicants does not fall within the category of commercial quantity.

6] On the other hand, the learned APP contended that no mistake is committed by the Investigating Officer in weighing the contraband article. Although the charge-sheet has been filed, there is huge evidence against the applicants, and therefore, they may not be released on bail, as there is every possibility that they may be involved in same nature of the offence.

7] There is no dispute that the commercial quantity under the NDPS Act for ganja is more than 20 kg. In the present case also, more than 20 kg is found from the applicants. However, it needs to be considered that the definition of the term "ganja" means the flowering or fruiting tops of the cannabis plant, excluding the seeds and leaves when not accompanied by the tops. In the present case, as per the FIR, the ganja found was more than 20 kg when leaves, flowers, stems, and seeds were weighed collectively. It is clear from the FIR that these articles were not weighed separately. Moreover, when the contraband article was produced before the Magistrate, it was observed that there were no flowering tops or fruits, but only knotty leaves with white seeds. Therefore, the question arises as to

whether the entire contraband articles seized from the accused ought to have been weighed collectively or separately.

8] The learned counsel for the applicants has relied upon the ruling of the Hon'ble Bombay High Court in **Mohammad Jakir Nawab Ali vs. State of Maharashtra, Criminal Application (BA) No. 602 of 2024**, wherein it is held that:

"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."

"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"

9] Further, in another ruling of the Hon'ble Bombay High Court in **Bail Application No. 2299 of 2019, Hari Mahadu Valse vs. State of Maharashtra**, it is held that:

"It is however to be noted that the chemical analysis report reveals that the material forwarded for analysis contained flower buds with pieces of stalks, stems, leaves and seeds, without quantifying the weight of flower tops. This fact prima facie raises a doubt whether ganja seized from the warehouse of the accused was

of commercial quantity as to attract the provisions under Section 20(C) of the NDPS Act".

10] From the perusal of the above rulings, it is clear that the contraband articles are required to be weighed separately and not collectively. In the present case, the record shows that the entire contraband articles were weighed collectively, and that is why the total quantity comes to more than 20 kg. Certainly if the flowering tops would have been weighed separately from the leaves and seeds, the weight would have been less than 20 kg. Furthermore, the inventory report does not even show that the contraband articles were flowering, seeds or fruiting tops. Therefore, in my opinion, the contraband articles seized in the present case do not fall within the ambit of commercial quantity, and therefore, the rigours of Section 37 of the NDPS Act would not apply.

11] Secondly, it appears that the Investigating Officer has not properly followed the procedure while complying with Section 50 of the NDPS Act. Section 50 of the NDPS Act is required to be complied with in its true spirit, and it is the duty of the Investigating Officer to make the accused aware that he has a right to be searched in the presence of a Gazetted Officer, and thereafter his free consent is to be obtained. On perusal of the charge-sheet, particularly the ittalanama it appears that there is no endorsement in the handwriting of the accused to show that he was made aware of his right to be searched before a Gazetted Officer. Merely obtaining the signature of the accused on a proforma cannot be said to be proper compliance with Section 50 of the NDPS Act. In my considered opinion, this is not proper compliance with Section 50 of the NDPS Act.

12] Be that as it may, the charge-sheet has been filed. The applicants are in custody since 05.07.2025, and their further custody

is not required. Hence, considering the entire aspects of the case, in my opinion, the applicants are entitled to be released on bail. Hence, the following order:

ORDER

- I] The application (Exh.-21) is allowed.
- II] The applicant no. 1 **Suraj S/o Shankarsingh Chavhan** and applicant no. 2 **Vijay S/o Namdeorao Dudhkawre** shall be released on bail upon executing a personal bond of Rs. 25,000/- (Rupees Twenty-Five Thousand only) each, with one solvent surety each in the like amount, in Crime No. 1021/2025 registered at Police Station Wardha City, for the offences punishable under Sections 8(c), 20(b) (ii)(C), and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
- III] The applicants are further directed not to tamper with the evidence and not to influence the witnesses in any manner.
- IV] The applicants shall not leave the jurisdiction of this Court without prior permission of the Court.
- V] The Jail Authority, Wardha, and the concerned Police Station be informed accordingly.

Date : 29/04/2026

(S.A.S.M. Ali)
Additional Session Judge,
Wardha.

CERTIFICATE

The contents of this P.D.F. file are same word to word as per the original order.

Date of Dictation : 29/04/2026
Transcription : 29/04/2026
Check and Signed : 29/04/2026
Uploaded On : 29/04/2026

(Prashant U Kawde)
Stenographer.