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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ BAIL APPLN. 140/2026
MUJABIL

.....Petitioner

Through: Mr. Mohd. Yasin, Mr. Dawneesh
Shaktnats, Ms. Sumaiya Khan and
Mr. Sami Ahmed, Advocates.

versus

GNCT DELHI

.....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP.
Mr. Vijay Kumar, P.S. Kalkaji.

+ BAIL APPLN. 384/2026
SHAHID @ AABU

..... Petitioner

Through: Mr. Shan Ul Islam, Advocate.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP.
Mr. Vijay Kumar, P.S. Kalkaji.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **06.04.2026**

1. By way of the present applications under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the applicants seek grant of regular bail in connection with FIR No. 670/2024 dated 09.12.2024, registered at Police Station Kalkaji, District South-East, New Delhi, under Sections 20/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [“the Act”].



2. I have heard Mr. Mohd Yasin and Mr. Shan Ul Islam, learned counsel for the applicants in BAIL APPLN. 140/2026 and BAIL APPLN. 384/2026, respectively, and Mr. Yudhvir Singh Chauhan, learned Additional Public Prosecutor for the State.

3. The State has also placed on record status reports.

4. The case of the prosecution, as it emerges from the status reports, is that, on 09.12.2024, the applicants were apprehended while carrying a black bag. Upon search, it was found that they were carrying 21.95 kilograms of “ganja” in the said bag. They were arrested on the same day. Upon examination of their mobile phones, it was found that Shahid @ Aabu [applicant in BAIL APPLN. 384/2026] had received photographs of the narcotic substance from one Yunus @ Mukhiya. The mobile phones also show Call Detail Record connectivity between the applicants herein and co-accused Yunus @ Mukhiya. Yunus @ Mukhiya is yet to be arrested.

5. In support of the present applications, Mr. Yasin and Mr. Islam submit that the alleged recovery of the contraband substance in the present case is of 21.95 kgs, which, even according to the Seizure Memo, included ‘*dried leaves and small branches*’. They submit that the seized substance in the present case does not answer to the statutory definition of “ganja” and that, in any event, the quantity of contraband cannot be determined, as the substance was admittedly weighed inclusive of leaves and stalk, which do not constitute “ganja” as per the Act. In this connection, they draw my attention to the definition of “ganja” in Section 2(iii)(b) of the Act, and the judgments of a Coordinate Bench of this



Court in *Ravina Kumari v. the State (NCT of Delhi)*¹, and *Ashok Kumar v. State Govt. of NCT of Delhi*², as well as a judgment of this Court in *Manjay Kumar v. State NCT of Delhi*³. Mr. Yasin has handed over a copy of the said judgments, as well as the chargesheet and accompanying documents, which are taken on record.

6. Mr. Chauhan, on the other hand, submits that the Forensic Science Laboratory [“FSL”] report has already been received, which confirms that the sampled goods are “ganja” within the meaning of the Act. The quantity of ganja seized being over 20 kg, Mr. Chauhan further submits that the rigours of Section 37 of the Act would apply.

7. The definition of “ganja” as provided in Section 2(iii)(b) of the Act, reads as follows:

“(b) ganja, that is, 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;”

8. The Seizure Report dated 09.12.2024, which forms part of the chargesheet, records that the bag was full of *dried leaves and small branches*, which appeared to be ganja by smell and sight⁴. The chargesheet also includes an order of the learned Magistrate’s Court dated 21.12.2024 at the time of sampling under Section 52A of the Act. In the aforesaid order, it is recorded that a “*muddy brown substance*” was produced before the Court, from which the samples were extracted. The FSL report dated 21.02.2025 has not been referred to in the status reports

¹ BAIL APPLN. 1256/2024, decided on 20.09.2024 [hereinafter, “*Ravina Kumari*”].

² BAIL APPLN. 2962/2025 and connected matter, decided on 21.11.2025 [hereinafter, “*Ashok Kumar*”].

³ BAIL APPLN. 4206/2025 and connected matter, decided on 19.03.2026 [hereinafter, “*Manjay Kumar*”].

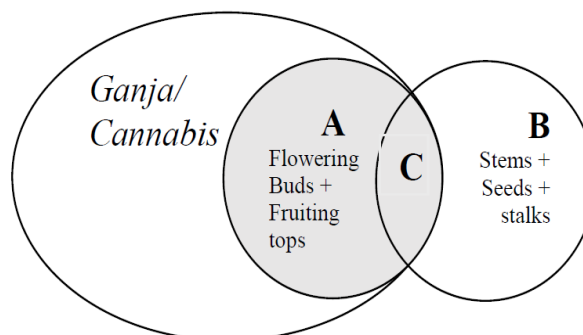


filed by the State. However, a copy thereof also forms part of the chargesheet. In the said report, the exhibit is described as “*Dried greenish brown coloured flowering and fruiting tops vegetative material, kept in a plastic container, weight approx. 48.4gm*”. Upon examination, it was found to be “*Ganja (Cannabis)*”.

9. The order/judgments of this Court cited by Mr. Yasin deal with similar situations, where the seized goods comprise a mixture of “*flowering buds and fruiting tops*” as well as other materials like leaves, stems, seeds, and stalk. The judgment in *Ravina Kumari* analyses the definition of “*ganja*” as follows:

“17. From the definition, it is evident that flowering buds and fruiting tops of the cannabis plant would be covered under section 2 (iii)(b) but merely leaves /seeds and stalks would not form a part of the definition of “*Ganja*” unless accompanied by the flowering and fruiting tops.

18. This can be represented accurately by the below Venn diagram:-



19. Thus, the intention of the Legislature appears to be clear that in case of Ganja, if it is merely **Category A** i.e. a homogenous mixture of flowering buds and fruiting tops, then the same would fall within the meaning of “*Cannabis*”, however, if it is merely **Category B** i.e. a homogenous mixture of seeds/leaves/stalks without the fruiting tops and buds, then the same would not attract the provisions of the NDPS Act.

20. Though the position with respect to homogenous mixtures i.e. **Category A & B** is clear, there is often a conundrum surrounding the

⁴ The Seizure Memo was recorded in Hindi, and has been translated in English by me.



quantification of **Category C**, i.e. the overlap between **Category A** and **Category B** constituting the heterogenous mixtures which include both the flowering tops and fruiting buds, along with the stems/ leaves and seed.

21. From the framework of the entire NDPS Act and a reading of S. 2 (iii)(b), it emerges that **if the material seized is a heterogenous mixture/Category C, constituting of Category A mixed with Category B, the placebo material such as stalks/leaves/stems (Category B) would not constitute an actual part of the drug and only the actual content and weight of the narcotic drug (Category A) would be relevant for determining whether it would constitute small quantity or commercial quantity.**

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26. Pertinently, the recovered quantity of about **24.145 Kg** was just 4.145 kgs more than the commercial quantity. Since, the entire substance including stems/stalks and dried leaves were weighed together without quantifying the weight of the flowering or fruiting tops, the quantity of 'Ganja' seized from the Applicant may be less than **commercial quantity** so as to attract Section 20 of the NDPS Act. **The weight of actual Ganja recovered is a matter of trial.**

27. It has been consistently held that **if there is a prima facie discrepancy in what was seized and what was analysed and weighed and there are reasonable grounds to believe that the petitioner is not guilty of offences dealing in commercial quantity. Consequently, the rigors of Section 37 of the NDPS Act, 1985 for grant of regular bail, would not become applicable as has been held in the case of Ibrahim Khwaja Miya Sayyed (Supra)**⁵.

28. In the case of **Suresh Kumar (Supra)**⁶, the Coordinate Bench of this Court gave benefit to the accused under Section 20 (b) (C) to 20 (b)(ii)(B) by observing that the weight of the contraband was not precise and the actual quantity of Ganja seized could not be determined because the FSL reflected that seeds, which do not come within the definition of Ganja, were weighed along with the flowering and fruiting tops. **Thus, when there is a doubt on the actual amount of recovery of contraband, then this unexplained discrepancy would result in a benefit accruing in favour of the bail applicant.**

29. Similar observations have been made in the case of **Rajesh Sharma (Supra)**⁷, **Bettanayaka (Supra)**⁸, **Ratanlal (Supra)**⁹ and **Ratnesh**

⁵ Ibrahim Khwaja Miya Sayyed v. State of Maharashtra, 2023 SCC OnLine Bom 2873.

⁶ Suresh Kumar v. State (Govt. of NCT of Delhi), 2016 SCC OnLine Del 1209.

⁷ Rajesh Sharma v. State of Rajasthan, 2024 SCC OnLine Raj 485.

⁸ Bettanayaka v. State of Karnataka, 2020 SCC OnLine Kar 3916.

⁹ Ratanlal Kharadi v. State of M.P., 2019 SCC OnLine MP 6083.



(*Supra*)¹⁰.

30. In light of the above discussion, it is settled that if there is the discrepancy in weight, as in the present case, the same would be a matter of trial.”¹¹

10. The same view was taken in *Ashok Kumar*, and followed in *Manjay Kumar*. In *Manjay Kumar*, although this aspect was referred to, the Court also came to a *prima facie* finding that the sampling procedure adopted was not in consonance with the requirement of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022.

11. Applying the binding judgment of this Court in *Ravina Kumari* to the facts of the present case, it is evident that the materials seized were not comprised only of “flowering or fruiting tops”, as the Seizure Memo itself refers to ‘dried leaves and small branches’. The weight of the contraband is 21.95 kilograms, which is only marginally in excess of the threshold for commercial quantity of *ganja* [20 kilograms and above]. In a similar situation, this Court in *Ravina Kumari* and *Ashok Kumar* granted bail, holding that the application of Section 37 of the Act was rendered doubtful.

12. Mujabil [applicant in BAIL APPLN. 140/2026] has been in custody for approximately 1 year and 4 months, and Shahid @ Aabu [applicant in BAIL APPLN. 384/2026] has been in custody for 1 year. The charges have been framed, but prosecution evidence has not yet commenced, for which 16 witnesses have been cited by the prosecution. The trial is thus likely to take substantial time.

¹⁰ *Ratnesh v. State*, 2017 SCC OnLine Del 9883.

¹¹ Emphasis supplied.



13. It is stated by Mr. Chauhan that there are no prior involvements of either of the applicants. He further states that Mujabil [applicant in BAIL APPLN. 140/2026], was only 18 years of age at the time of arrest, and Shahid @ Aabu [applicant in BAIL APPLN. 384/2026], has been released on interim bail on three occasions, in respect of which, there is no allegation of misuse of bail.

14. Having regard to the above factors, it is directed that the applicants be released on bail in connection with FIR No. 670/2024 dated 09.12.2024, registered at Police Station Kalkaji, District South-East, New Delhi, under Sections 20/29 of the Act, subject to furnishing a personal bond in the sum of Rs. 35,000/- each, with one surety each in the like amount, to the satisfaction of the concerned Trial Court/Duty Magistrate, and further subject to the following conditions:

- a. The applicants shall appear before the learned Special Court on each and every date of hearing.
- b. If the applicants have passports, they shall surrender the same to the concerned Trial Court, and shall not leave the country without the prior permission of the concerned Trial Court.
- c. The applicants shall ordinarily reside at the address as per prison records, and shall not change the addresses without informing the concerned Investigating Officer ["IO"]/ Station House Officer ["SHO"].
- d. The applicants shall furnish their mobile numbers to the concerned IO/SHO, and shall ensure that the said mobile numbers remain operational and switched on at all times. The mobile numbers shall



not be changed, nor shall the phones be switched off, without prior intimation to the IO/SHO.

- e. The applicants shall not, directly or indirectly, contact, nor visit, nor offer any inducement, threat, or promise to any of the prosecution witnesses or other persons acquainted with the facts of the case.
- f. The applicants shall not, directly or indirectly, tamper with evidence nor otherwise indulge in any act or omission that would prejudice the proceedings in the pending trial.
- g. The applicants shall not commit any offence during the pendency of the proceedings.

15. The bail applications are disposed of in terms of the above.

16. It is clarified that the observations made herein are solely for the purpose of adjudication of the present bail applications, and shall not be construed as an expression of opinion on the merits of the case, nor shall they prejudice the rights and contentions of the parties at any stage of the proceedings.

17. A copy of this order be sent to the concerned Jail Superintendent for information and necessary compliance.

PRATEEK JALAN, J

APRIL 6, 2026
SS/KA/