

**Special Case (NDPS) No.218/2017**  
**Order passed below Exh.26**

1. This application is filed by accused Nos.1 to 5 in Special Case (NDPS) No.218/2017 for bail. It is contended by them that they have been arrested by the police of Tofkhana Police Station, Ahmednagar in connection with CR No.II-121/2017 on 17-7-2017 for the offences under Secs.20 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Sec. 34 of the Indian Penal Code.

2. It is alleged by the prosecution that on 17-6-2017 at about 6.29 a.m. complainant and other police staff were on patrolling duty in the jurisdiction of Tophkhana Police Station. When the patrolling party reached near Sunny Palace Hotel on Nagar-Aurangabad road, one Innova Car No.MH-24-V-1699 and another vehicle Bolero Jeep No.MH-17-AJ-6946 was also following said Inova car. Therefore, police staff on patrolling duty gave signal to stop them, however, they did not stop and proceeded ahead in high speed. The police staff on patrolling duty chased them and obstructed them near Asha Talkies, Ahmednagar at about 6.50 am. Then police party inspected those vehicles in presence of them and they found packets in the backsides of those vehicles and they seized 330.50 Kg. Ganja kept in 150 packets from Innova car and 306 kg. Ganja in 136 packets from Bolero Jeep.

3. They were produced before the J.M.F.C. and they were remanded in PCR. Thereafter, applicant No.2 has filed first bail application before this Court and the same has been rejected. However, this bail

application is on different grounds. After completion of the investigation the I.O. has filed chargesheet and it is numbered as Special Case (NDPS) No.218/2017. The applicants have not committed any crime. No death sentence or sentence of imprisonment for life is provided for these offences. The I.O. has filed charge-sheet before the Court within statutory period. However, said charge-sheet is incomplete as the I.O. has not filed C.A. report within statutory period as per the provisions of Cr.P.Code and Narcotic Drugs and Psychotropic Substances Act, 1985. Hence, the I.O. has not filed complete chargesheet under the provisions of Cr.P.Code and N.D.P.S.Act. Hence, the applicants are entitled to be released on bail. Applicants/accused are neither the owner nor the possessors of the vehicles. They have not committed any offence under the provisions of N.D.P.S.Act. There is no reason to believe that the applicants/accused have committed offences under the provisions of N.D.P.S.Act. There is no circumstances on record which reveals that the applicants have committed any offence. They are ready to furnish sureties. If they are released on bail they will be easily available for the trial. They will not commit any offence while on bail. They will not abscond or will not tamper the prosecution evidence. The investigation is over. Their custody is unwarranted. Hence, they be released on bail.

4. By filing say at Exh.27 the prosecution has resisted this application contending that there is strong prima facie case against all the accused. The

investigation of the crime is completed and the chargesheet is filed in this Court. There are change in circumstances. The offence is serious one. There is big racket of smuggling Ganja. The absconding accused are yet to be arrested. If the accused are released on bail, they would bring adverse pressure on the prosecution witnesses and will tamper the prosecution evidence. There is every possibility of commission of similar offence by them. Hence, application be rejected.

5. Heard Ld.Advocate for the accused. Perused the charge-sheet. This charge-sheet is filed in this Court on 15-9-2017 i.e. within statutory period. The Ld.Advocate for the accused argued that this application for bail is under Sec.167 (2) of the Code of Criminal Procedure and Section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985. He argued that though the charge-sheet has been filed by the prosecution within statutory period, it is not coupled with C.A. report on the basis of which this Court will find prima facie grounds while framing the charge against the accused. Though the offences under the provisions of N.D.P.S. Act are committed by the accused, filing of chargesheet without C.A. report is incomplete charge-sheet and therefore all accused are entitled to be released on bail under the provisions of Sec.167(2) of the Cr.P.Code r.w. Sec.36A of the N.D.P.S/Act.

6. All accused in this application are arrested on 17-6-2017 for the charges under Secs.20 and 22 of the N.D.P.S.Act. It is seen that the accused are

found in possession of commercial quantity of Ganja. Since then they are in jail.

7. The Ld.APP Mr.Diwane argued that the prosecution has filed the charge-sheet within statutory period i.e. before 180 days. Therefore, the provisions of Sec.167(2) of the Cr.P.C. and Sec.36A of the N.D.P.S.Act are not attracted. He has placed his reliance on two reported ruling in case of **Gaurav & ors. Vs. State of Rajasthan** reported in **2013(4) Crimes 306 (Raj.)** and **Himmat Singh Vs. The State of Rajasthan** reported in **1995 Cri.LJ 2967 (Raj.)** In both these cases Hon'ble Rajasthan High Court has held that;

Sec.173(8) of the Cr.P.C. permits the prosecution to file documents and evidence in addition to what has already been submitted alongwith the charge-sheet under Section 173(2) of the Cr.P.C. When a document in the nature of FSL report is filed by the learned Public Prosecutor under Section 173(8) Cr.P.C., it need not even be supplemented by an additional chargesheet. The document in the nature of FSL report is otherwise also admissible in evidence under Section 293 of the Cr.P.C. Thus, no additional charge-sheet is needed to file such a document in the Court. The Court itself is empowered to summon the expert's report at any stage of the trial. Therefore, charge-sheets have been filed in these cases within the permissible period as provided in Section 36A(4) of the Cr.P.C., therefore, the right of the accused to be released on bail under Section 167(2) Cr.P.C. on ground of charge-sheet not having been filed within the statutory period does not survive."

8. This application is filed by the accused on 16-12-2017 in this Special Court itself. Therefore, say of the Ld.APP is called. The Ld.APP filed his say on 21-12-2017 and I heard the application immediately. During hearing of the argument the Investigating Officer has submitted C.A. report. Then Ld.Advocate for the accused again submitted that filing of the C.A. report at the time of hearing does not affect the rights of the accused of statutory bail. However, he has not submitted any ruling thereon.

9. The Ld.Advocate for the accused has placed his reliance on the order of Hon'ble Bombay High Court passed in Criminal Bail Application No.509 of 2014 (Ranjeet Manohar Machrekar Vs. The State of Maharashtra) dtd.14-7-2014, Criminal Bail Application No.241 of 2017 (Manik Sahebrao Chauhule Vs. The State of Maharashtra) dtd.23-3-2017 and one reported ruling in the case of Sunil Vasantrao Phulbande & anr. Vs. State of Maharashtra reported in 2003(3) Mh.LJ 689. In all these orders the Hon'ble Bombay High Court has held that the charge-sheet filed for the offence under the provisions of N.D.P.S.Act, 1985 against the applicant not accompanied by the C.A.report the said charge-sheet is incomplete. Such charge-sheet cannot be said to be charge-sheet contemplated under Sec.173(5) so as to enable the Magistrate to take cognizance of the offence. The applicants in Police custody for more than 90 days were entitled to be released on bail for non-compliance of provisions of

Sec.167(2) of the Cr.P.C.

10. From the above rulings and judgments cited, it is crystal clear that the charge-sheet filed without C.A. report is incomplete charge-sheet and does not bar to pass order of bail under Sec.167(2) of the Cr.P.Code. However, developments happened in this case are to be seen her. When hearing of this application was going on the Investigating Officer has filed C.A. report and therefore the charge-sheet is complete. In the circumstances, the applicants are not entitled to be released on bail under Sec.167(2) of the Cr.P.Code r.w. Sec.36A of the N.D.P.S.Act. Hence, I proceed to pass the following order:

**ORDER**

The application stands rejected.

Date: 22-12-2017.

(P.R.Bhavake)  
Addl.Sessions Judge,  
Ahmednagar.