

MHAH010047602017



Order below Exh.118 in Special Case No. 218/2017
(State of Maharashtra Vs. Sandeep Dilip Anbhule)

Perused application and say filed by prosecution as per Exh.119. Heard Ld. Advocate M. B. Tawale for applicant / accused and Ld. APP Smt. Kapse for prosecution.

2] In the light of all aforesaid aspects following points arose for consideration and have been answered for the reasons discussed thereto :

Sr. No.	Points	Findings
1)	Is applicant entitled for his release on bail ?	... Yes.
2)	What order ?	... As per final order.

Reasons

3] It is rather an undisputed fact on record that, offences attributed against all the accused including this applicant / accused no. 11 in the instant case are punishable under the provisions of Narcotic Drugs and Psychotropic Substances Act, 1985. Section 37(1) (b)(ii) thereof has some or other way imposed restrictions on the power of Special Court to release the accused on bail. In other words the Special Court may release the accused involved in the offences punishable under Section 19 or 24 or 27(A) of the Act, subject to its satisfaction that, there are reasonable ground for believing that, such

accused is not guilty of such offence or offences and is not likely to be commit any offence while on bail. Here it would not be out of place to mention that, there is no allegation of the prosecution of the, involvement of this accused in any of the offences defined under Section 19, 24 and 27(A) of the Act. Therefore, bar contemplated by Section 37(1)(b)(ii) of the Act for his release on bail is not at all invocable. Further, it has to be mentioned that, from the language of Section 37(2) of the Act further it is crystal clear that, bar to release the accused on bail as contemplated by Subsection (1) clause (b)(ii) is in addition to the limitations under the Criminal procedure code or any other law for the time being enforce on granting the bail. It means that, provisions under Section 439 of Cr. P. C. are not foreign to consider the propriety of the bail application moved by the accused.

4] So far propriety of the bail application in the context of Section 439 of Cr. P. C. is concerned. It is a matter of record that, investigation in the crime has already been completed and the allegation attributed to this accused/applicant is based on the statement given by one of the co-accused Navnath Eknath Aher as per Section 27 of Indian Evidence Act that some portion of ganja found in possession of the accused nos. 1 and 2 was to be sold to this accused/applicant. Consequently, on the basis of only that statement he has been prosecuted. Having considered the scope of Section 30 of the Indian Evidence Act, there would be a serious debatable question in the case on hand whether that isolated so called piece of evidence would suffice the object of prosecution to book this applicant behind the bars for the so called contraventions of Sections 20 and 22 of the Act ? In this

regard here again it may not be out of place to mention that, in so called statement of co-accused namely Navnath Eknath Aher, so many facts stated by said accused have been recorded. But, without a further evidence of actual discovery of the same so as to give full effect to Section 27 of the Indian Evidence Act against this accused/applicant. In all these circumstances only by detention of the accused behind the bars one may find seldom answers to aforesaid questions. But, the answers to aforesaid questions are to be found on the basis of legal principles governing the matter for which detention of the accused behind the bar till fullfledge hearing the case is seldom required. In other words he is to be released on bail. Hence, following order.

O R D E R

- 1) Application is allowed.
- 2) Applicant / accused be released on P.B. and S.B. of Rs. 25,000/- (Rs. Twenty Five Thousand only).

Date : 16/03/2021
Ahmednagar.

(R.M. Kulkarni)
Additional Sessions Judge,
Ahmednagar.