

MHBU040004722021



Order below Exh.17
(Passed on 14.01.2022)

The application is preferred by applicant/accused Atmaram Gopalsing Sable under Section 439 of Cr.P.C. r/w. Sec.37 of NDPS (The Narcotic Drugs and Psychotropic Substance) Act for seeking release him on bail in connection with Crime No.49/2021 registered with Police Station Shivaji Nagar, Khamgaon for the offence punishable under sections 20(B)(ii) of the NDPS Act.

2. Heard learned advocate for applicant/accused, perused the say of I.O., heard learned APP for prosecution.

3. It is submitted on behalf of the applicants/accused that the applicant/accused is falsely arrested in the present crime. Applicant/accused is innocent and has not committed any type of offences as alleged. The applicant had taken lift in offending vehicle with co-accused No.2 and 3. He is the bonafide passenger and falsely involved in this crime. The reliance is placed on the citations i.e. (1) Sk. Washim s/o. Sk. Karim Vrs. State in Cri. Bail Appln. No.470/2021 and (2) Krushna s/o. Ramdas Gond and others Vrs. State decided by Hon'ble High Court on 24/6/2021.

It is submitted that the facts and circumstance are the same as considering the fact that this accused is the bonafide passenger and there is criminal antecedent against him. It is submitted that as the investigation is completed trial is yet to begin therefore it will take its considerable time for disposal. As he is the passenger and want to reach at Nandura, not knowing about the goods in the vehicle. He is in custody since 04/02/2021. As the C.A. report is not received the trial is pending. By showing his willingness to abide by the condition of bail, he claims for his release on bail. Perused the citations referred.

4. As per Exh.19 prosecution filed say by describing about all the incidence, receiving secret information, raid, seizure and completing the formalities by I.O. It is submitted that though this accused is submitting that he is the passenger in the said vehicle, considering the names, address of other accused in this matter it is submitted that in furtherance of their common intention and by taking help of each other the transportation of contraband material is carried out by this accused along with others. Earlier also this accused and his associates have committed alike offences. If he is released on bail he may again commit such offence.

5. During the argument also it is pointed out by the side of applicant that he being the passenger was sleeping in the cabin of the vehicle and the property was seized from backside of the vehicle nothing is seized from this accused even has no mobile phone. The

mobile calls detail are from other accused. By pointing out the detail, the lacuna in the process and procedure obtained it is submitted that whole story is manipulated, formalities are completed subsequently. This accused is not having conscious possession of the article. Though the prosecution is submitting about habitual accused, the detail for the same are not submitted. It is the first offence the wrong sections are applied under the charge-sheet. The trial is yet not commenced. C.A. report is not received.

6. After hearing from the side of prosecution, as per submissions made it is seen that the seized articles are of much higher quantity which is better than the commercial quantity. The role of the accused is very specified. He is residing in the same place where the accused are residing and he is knowing them. With their common intention they have committed the offence and the prosecution is ready for conducting the trial.

7. On perusal of citations referred it is seen that the facts are different. There were two motorcycles traveling together and Gaanja was seized from both motorcycle riders and the procedure was completed by police by making separate seizures from them for the different quantity of Ganja. Here no such facts are there. All the three accused were traveling in one vehicle from where the Gaanja was seized. In another cited case law also the facts are very different. In the dicky of the travel bus two air bags of Gaanja were found and seized. There are various passengers in the said bus. The fact about

conscious possession was discussed in the said citation therefore, considering those facts there the accused was in the travel bus where other passengers were also there. Here this fact is not relevant and therefore, accordingly the ratio of both cited case law are not helpful here.

8. Considering the fact that the charge-sheet is filed and prosecution is ready to conduct the trial, here the directions can be given to prosecution to proceed ahead with the matter and take attempts required to seek for report of chemical analysis as early as possible. About the conscious possession of this accused Atmaram, the conclusion at this stage cannot be drawn without evidence moreover, he is traveling in the same vehicle in the cabin along with other co-accused from the backside of the said vehicle the Gaanja is seized which is of much large quantity. Hence, at this stage he cannot be released on bail. Therefore, following order is passed.

ORDER

The application Exh. 17 is rejected.

Khamgaon
Date: 14.01.2022

Sd/-
(Smt. P. S. Kale)
Special Judge,
Khamgaon

Certificate

I affirm that the contents of this P.D.F. file order are same, word for word as per original order.

Name of Steno : C. N. Mahale
Name of Court : Addl. Sessions Judge, Khamgaon.
Uploaded on : 14/01/2022