

IN THE COURT OF DISTRICT JUDGE-1, & ASJ, GONDIA.

SPECIAL (NDPS) CASE No. 77/2022.

(CNR NO.MHGO01001040-2022)

State, PSO, Duggipar -Vs- Sanjay Bansod+3

ORDER BELOW EXH.13.

(Passed on this 04th day of November, 2022)

This is an application filed by applicant/accused **No.3 – Gulab Ghanshyam Giri** for grant of bail u/s 439 of Cr.P.C. The applicant/accused has been arrested on 13/05/2022 by Police Station, Duggipar in Crime No. 104/2022 for alleged offence punishable under Sec. 8(c), 29 & 20 (C) of N.D.P.S. Act.

2] Brief facts of the prosecution case is that, on 12/05/2022, Duggipar Police Station received secret information that one person Arun Chaure is possessing and transporting 'Ganja' in his Hyundai Varna Car No.MH-04/W-5333 and is taking the said Ganja to Gondia from Deori. Hence, they started patrolling the said road and went to village Dawwa and formed a Nakabandi. At about 7.35 p.m. they saw a Hyundai Varna Car coming from Sadak/Arjuni towards Gondia and one another Honda City was following it. They stopped both the cars and searched Hyundai Varna Car in which accused Sanjay Bansod and Ajay Rahulkar were travelling. They also searched another car bearing No.CG-04/ZX-7755 in which accused Gulab Giri (applicant) and accused

Arun Chaure were travelling. They found two packets of poly-plastic gunny bags in Hundai Varna Car and also found one another bag in another Honda City car. The bags were containing Ganja. The pahchas were called. Gazzeted officer PI Shri Baban Avhad was also called for and in his presence the contraband was seized. The seized contraband were weighed in the electronic weigh scale and the total weight of the contraband is 28 KG 50 gms worth Rs.3,36,600/-.

3] Learned Advocate Shri Nizam Sheikh for the applicant submits that as per Sec.37(1)(ii) of NDPS Act there is bar to grant bail if the Court is satisfied and bail can be granted, only in case if the courts satisfies that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. He further submits that before the search is taken Sec.50 of NDPS Act requires that an option should be given to the accused to be search in the presence of a Gazetted Officer or the Magistrate and the offer should be individually given to each of the accused and only after recording his option the accused can be searched in absence of Gazetted Officer if he does not ought for search before a Gazetted Officer or a Magistrate.

4] In support thereof he has also relied upon the case of *Pankaj Pradhan -Vs- State of Orissa, 1998 Cr.L.J. 2694* wherein it is held that if the gazettate office is a part of

raiding team, the provisions of Sec.50 of NDPS act are vitiated. He has also relied upon the case of ***Sanjaykumar Verma -Vs- State of U.P Allahabad High Court, 2006 Cr.L.J. 1426.***

5] He further submits that the applicant is a driver and was hired by co-accused Arun Chaure and was not aware of the consignment which was of the co-accused. There are no criminal antecedents of the applicant and no case under NDPS Act is registered against the applicant. He was paid Rs.2000/- for driving the car and the owner had accompanied him. He has prayed for grant of bail.

6] I.O. has filed reply at Exh. 16 and opposed the application on the ground that 28 KG of Ganja is seized from the applicant and other co-accused which is a commercial quantity. The vehicles have been seized. The applicant may commit similar offence in future. Prima facie case is made out against the applicant. He has prayed for rejection of the application.

7] Ld. DGP Shri. Chandwani has filed say at Exh.17 and has opposed the application on the ground that the prima facie case is made out against the applicant. Commercial quantity of Ganja of more than 28 KG has been seized from the applicant. As per Sec.37 of NDPS Act bail cannot be

granted if prima facie case is made out. The compliance of Sec.50 of NDPS Act is required for the personal search as held by the Hon'ble Supreme Court in the case of ***Dayalu Kashap - Vs- State of Chattisgarh, Cri.Appeal No.130/2022***. As such the ratio laid down in the case cited by the applicant would not apply as the Ganja was seized from the vehicle of the applicant. He has prayed for rejection of the application.

8] Perused the charge-sheet. The quantity of the Ganja seized from the accused/applicant is 28 KG which is a commercial quantity. It is the case of the prosecution that the Ganja was seized which was kept in the boot of both the vehicles. I have gone through the case of ***Pankaj Pradhan -Vs- State of Orissa and Sanjaykumar Verma -Vs- State of U.P (Cited Supra)***. The facts of both the cases are different. Sec. 50 of NDPS Act does not apply to car search and applies only to the personal search as per the ratio laid down in the case of ***Dayalu Kashap -Vs- State of Chattisgarh (Supra)*** wherein it is held that, in the said case the recovery of the contraband was in a polythene bag which was being carried on a 'Kawad' and that the recovery was not in person and held that the scope of Sec.50 of NDPS Act not be expanded beyond personal search and the recovery made otherwise would not stand vitiated. Thus, the ratio laid down in the said cases relied upon by the applicant would not apply to the case in hand.

9] However, there are no criminal cases, more particularly under NDPS Act reported against the applicant/accused. As per the charge-sheet the applicant was driving one of the car. As per the F.I.R. also the information received by the police was that Arun Chaure was transporting the narcotics. Under such circumstances, bar under Sec.43 of NDPS Act would not be attracted. Case for grant of bail is made out. Hence, I pass the following order.

ORDER

- 1] Application [Exh.13] is allowed.
- 2] The applicant/accused **Gulab Ghanshyam Giri** be released on his executing PR bond of Rs.25,000/- and furnish one surety in the like amount on the following conditions;
 - i] The applicant shall not threaten or influence the witnesses.
 - ii] The applicant shall attend the trial regularly.
- 3] Application is disposed of.

Gondia.
Dated: 04.11.2022.

Sd/-*
(Adil M. Khan)
District Judge-1 & ASJ,
Gondia.