

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. 30.****(Passed on this 13th day of January, 2023)**

This is an application filed by applicant/accused **No.2 – Ajay Hagruji Rahulkar** 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), 20(c) & 29 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 Hundai 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 Hundai Varna Car coming from Sadak/Arjuni towards Gondia and one another Honda City was following it. They stopped both the cars and searched Hundai Varna Car in which accused Sanjay Bansod and Ajay Rahulkar (applicant) were travelling. They also searched another car bearing

No.CG-04/ZX-7755 in which accused Gulab Giri and accused Arun Chaure were travelling. They found two pockets 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 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 court is satisfied 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. In support thereof he has relied upon the cases of (i) ***State of Rajasthan -Vs- Parmanand and another, 2014***

All.M.R. (Criminal) 1475 (SC), (ii) Sholadoye Samuel Joy -Vs- State of Mah., 2022 ALL.M.R. Criminal 1420, Bombay High Court, (iii) Sahib @ Manprit @ Jasmati Singh -Vs- State of Uttarakhand, Cri.Appeal No.133/2020, Uttarakhand High Court and (iv) H. R. Barge -Vs- Ashok Manikchand Cahankeshwara, 2019 ALL MR (Cri) 2874 . He submits that in absence of the compliance of Sec.50 of NDPS Act there are no chances of applicant/accused being found guilty and hence he is entitled for grant of bail.

4] I.O. has filed reply at Exh. 31 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 accused has admitted that the contraband is of his ownership. The secret information revealed that the applicant Ajay Rahulkar is transporting the contraband in his two vehicles. There are 04 offences registered against the accused out of which 03 are under the Bombay Prohibition Act. He has prayed for rejection of the application.

5] Ld. DGP Shri. Chandwani 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.

6] 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 cases of (i) ***Sholadoye Samuel Joy -Vs- State of Mah.*** (ii) ***State of Rajasthan -Vs- Parmanand,*** (iii) ***Sahib @ Manprit @ Jasmati Singh -Vs- State of Uttarakhand,*** and (iv) ***H. R. Barge -Vs- Ashok Manikchand Cahankeshwara, (Cited Supra)***. It is the contention of the learned advocate for the applicant that the gazetted officer in whose presence the search was conducted was a police officer and that a common intimation to all the accused were given.

7] The Supreme Court in the case of ***Dayalu Kashap - Vs- State of Chattisgarh (Supra)*** 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. In the case in hand the contraband was found in vehicles. Under such circumstances, the provisions of Sec.50 would not apply in view of the finding of Hon'ble Supreme Court in the above referred case of ***Dayalu Kashyap***. Thus, the observations made in the said cases relied upon by the applicant would not apply to the case in hand.

8] It is also the contention of the learned advocate for the applicant that two co-accused have been granted bail and on the ground of parity, the applicant is also entitled for grant of bail. The co-accused Gulab Giri and Sanjay Bansod came to be released on bail on the ground that they were merely employed as driver by the applicant and another co-accused. As such the case of the applicant is not in parity with the case of co-accused Gulab Giri and Sanjay Bansod.

9] The quantity seized from the applicant of the contraband is a commercial quantity. Prima facie case is made

out against the applicant. No case for grant of bail is made out. Hence, I pass the following order.

ORDER

- 1] Application [Exh.30] is hereby rejected.
- 2] Application is disposed of.

Gondia.
Dated: 13.01.2023.

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