

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. 43.****(Passed on this 18th day of October, 2023)**

This is an application filed by applicant/accused **No.4 – Arun Kewal Chaure** 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. This is third bail application. The earlier applications came to be rejected by order dated 04/08/2022 passed below Exh.4 and order dated 13/01/2023 passed below Exh.33.

2] Brief facts of the prosecution case is that, on 12/05/2022, Duggipar Police Station received secret information that one person Arun Chaure (applicant) 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 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 Shaikh for the applicant submits that similarly placed accused Ajay Rahulkar in whose car 17.450 Kgs of ganja was recovered has been granted bail by the Hon'ble High Court in Cri.Appln. (BA)No.670/2023 by order dated 05/10/2023. As per the allegations in the chargesheet 7.150 Kgs of ganja was seized from the car in which applicant was travelling. The Hon'ble High Court, relying on the case of Amarsingh Ramjibhai Barot Vs State of Gujrat (2005) All MR (Cri) 229 (SC) held that, considering the legal position the quantity of Ganja recovered from Hyundai vehicle individually is not a commercial quantity and therefore bar under Sec.37 of NDPS Act will not be applicable. He further submits that on the ground of parity the applicant is entitled for grant of bail under the changed

circumstances when co-accused Ajay Rahulkar who was found in possession of 17.450 kgs of ganja has been released on bail.

4] I.O. has filed reply at Exh. 45 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 applicant Arun Chaure is transporting the contraband in his two vehicles. He has prayed for rejection of the application.

5] Ld. DGP Shri. Chute 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. He has prayed for rejection of the application.

6] Perused the charge-sheet. This is third bail application. Earlier two bail applications came to be rejected on merits. However, now by order dated 05/10/2023 the Hon'ble High Court granted bail to the co-accused Ajay Rahulkar who was found in possession of 17.450 Kgs of Ganja in his vehicle. As per the chargesheet the applicant was found in possession 7.150 kgs of Ganja in his vehicle. There is change of circumstances as co-accused having more quantity of Ganja has been granted bail by the Hon'ble High Court

holding that individually they are not of commercial quantity. Under such circumstances, on the ground of parity and also on the ground that individual possession is not a commercial quantity, the applicant is entitled for grant of bail. Hence, I pass the following order.

ORDER

- 1] Application [Exh.43] is allowed.
- 2] The applicant/accused **No.4 – Arun Kewal Chaure** be released on bail in Crime No.104/2022 registered with Police Station, Duggipar for the offence punishable under Sec. 8(C), 20(C), 29 of the NDPS Act on furnishing PR bond in the sum of Rs.50,000/- with one solvent surety in the like amount.
- 3] The applicant shall not induce, threaten, or promise any witness, who are connected with the alleged crime.
- 4] The applicant shall not indulge in the similar type of offence till disposal of this case.
- 5] The applicant shall attend the trial regularly.
- 6] Voilation of any condition shall be ground for cancellation of bail.
- 7] Application is disposed of.

Gondia.
Dated: 18.10.2023.

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