

Order below Exh.14, in Special Case No.22/2020
(The State of Maharashtra Vs. Ramsevak Yadav)
CNR No. MHJG010003632020

This is an application filed under Sec. 439 of Cr.P.C. by the applicant / accused No.4 Dayaram Kailas Pavara, aged 25 yrs. R/o. Bhoiti, Taluka Shirpur, At present Sonbardi, Taluka Shirpar, Dist. Dhule, for releasing him on bail in Crime No.28/2020 of Chopada Rural Police Station, for the offence punishable under Section 8(C) 20 (C), 29 of N.D.P.S.Act 1985 read with Sec. 188, 269, 270 of Indian Penal Code and Sec. 51 (b) of the Disaster Management Act 2005.

2. Prosecution case is that, on 16.05.2020 at about 16.00 hours at the check post near Budhgaon fata on Hated to Amalner road, the accused No.1 was found driving the Eicher vehicle bearing No. MH-47-AS-0887 along with the accused No.2, that they were found carrying psychotropic substance, that the accused No.3 and 4 were also following the vehicle of accused Nos. 1 and 2 on their Honda motorcycle, that all the accused in furtherance of their common intention, were found carrying and transporting psychotropic substance illegally for the purpose of sale. Hence, the offences under the above said sections came to be registered against them.

3. On the basis of above said allegations, the offence vide C.R. No. 28/2020 of Chopada Gramin Police Station, Tal. Chopada, Dist. Jalgaon was registered for the aforesaid sections against the accused / applicant No.4. The accused / applicant No.4 was

arrested on 17.05.2020. He was in police custody till 22.05.2020 and thereafter he was sent to magisterial custody remand.

4. Perused the grounds in the application and say filed by prosecution. Heard the learned Advocate for the accused / applicant and learned A.P.P.for State.

5. Following points arise for my determination which carry my findings thereon as follows:-

Sr.No.	Points	Findings
1.	Whether the applicant/accused has made out the case for grant of bail, as prayed?	In affirmative.
2.	What order?	As per final order.

- REASONS -

AS TO POINT No.1:-

6. It is submitted by the learned Advocate for the accused that prior to filing chargesheet, the accused / applicant had filed the bail application but it was rejected. This is the first application after filing chargesheet. It is further submitted that the accused is not remotely connected with this offence, that there is no evidence at all to connect the accused with the alleged offence, that his name has not been mentioned in the F.I.R., that he is not habitual offender, that nothing is to be seized from him, that the applicant/ accused is the only earning member of his family and his family members are depend upon him.

7. It is further submitted that the accused No.1 has been released on bail by the Hon'ble High Court, Bench at Aurangabad in Bail Appln. No.997/2020, dated 19.09.2020. It is further submitted that the accused No.1 Ramsevak was the owner of Eicher vehicle and he was found in possession of the said Eicher in which the contraband was found. On the other hand, the present applicant/ accused is not found in possession of any contraband, that he is not found transporting the contraband. It is further submitted that when the accused No.1 Ramsevak has been released by the Hon'ble High Court, the present applicant / accused is also entitled to be released on bail on the ground of parity.

8. It is further submitted that the applicant / accused is permanent resident of given address, that he is ready to abide by the terms and conditions imposed upon him. Hence, it is submitted that the application be allowed.

9. The learned A.P.P.for State has submitted that the previous applications have already been rejected on merits, that there is prima facie case against the accused / applicant, that he is a person who allegedly loaded the bags containing ganja in the said Eicher vehicle, that he was following the said Eicher vehicle up to its detention and the accused / applicant was arrested by the police, when he was following Eicher vehicle. As such, there is sufficient material to show the involvement of the accused / applicant in this crime. If he is released on bail, there is every likelihood of his absconding, he may tamper with the prosecution

evidence and pressurize the prosecution witnesses. Hence, it is submitted that the application be rejected.

10. It is not disputed that the present applicant / accused had already filed the bail application vide Exh.7 during M.C.R. along with other accused persons and by passing common order on all the bail applications of accused No.1,2 and 4, his prayer for releasing him on bail was rejected. At that time, it was observed that there was recovery of huge amount of ganja of commercial quantity. It was further observed that the investigation was not complete, therefore, the said application was rejected.

11. Now, it is pertinent to note that the investigation has been complete, the chargesheet has been filed against accused persons. As such, it can be said that the further detention of the applicant/ accused is not necessary for the purpose of interrogation. However, as the contraband alleged to be seized from the accused persons is of commercial quantity, it is necessary to see whether accused / applicant has proved that his case has been covered by the provisions of Sec. 37 of N.D.P.S.Act. As per the provisions of Sec. 37 of N.D.P.S.Act, if the accused is involved in the offence under Sec. 24, Sec. 27-A of N.D.P.S.Act, or if the contraband is of a commercial quantity; in that situation, the accused cannot be released on bail, unless it is found that no prima facie case is made out against him. In view of the said provisions, it is necessary to see what material has been brought by the prosecution to show the involvement and connection of the accused / applicant with the said offence.

12. I have gone through the contents in the F.I.R.. It appears that the entire allegations in the F.I.R. are against the accused No.1. The only allegation against the accused / applicant is that he was found following the Eicher vehicle, therefore, he was stopped by the police. Except the allegations that the accused/ applicant alongwith another accused was not found following the Eicher vehicle on his motor cycle, there are no other incriminating circumstances against him. It appears that except the said allegation in the F.I.R., there is no material brought by the prosecution to prima facie show the involvement of the present applicant in this case.

13. I have gone through the order passed by the Hon'ble High Court in Bail Appln. No. 997/2020, dated 19.09.2020. The Hon'ble High Court has ordered to release accused No.1 Ramsebak Yadav. The Hon'ble High Court has also observed in this order that there is no evidence from where such contraband article were taken by these accused No. 3 and 4 and kept it below the wheat bag in Eicher goods vehicle and the same was within the knowledge of the applicant / accused Ramsevak. The Hon'ble High Court further observed that the applicant / accused Ramsevak has made out the case in terms of the provisions of section 37 of the N.D.P.S. Act and he was released on bail. It is to be noted that the Hon'ble High Court has observed that there is no evidence wherefrom the said contraband articles were taken by these accused Nos. 3 and 4 and kept below the wheat bags in the Eicher goods vehicle. It is further to be noted that there is no prima facie material brought by the prosecution to show that the applicant / accused No.4 has loaded the said contraband articles

in the said Eicher vehicle. When the Hon'ble High Court has released accused No.1 Ramsevak on bail, in such situation, the accused / applicant can also be released on bail. It is further to be noted that the applicant / accused No. 4 has made out case as per the provisions of Sec. 37 of the N.D.P.S. Act. Hence, he is entitled to be released on bail. Accordingly, I answer point No.1 in affirmative and proceed to pass the following order:-

Order

1. The application is allowed.
2. Accused/applicant No.4 Dayaram Kailas Pavara, aged 25 yrs. R/o. Bhoiti, Taluka Shirpur, At present Sonbardi, Taluka Shirpar, Dist. Dhule be released on his executing P.R.Bond of Rs.25,000/- (Rupees twenty five thousand only) with one surety in the like amount, in Crime No.28/2020 of Rural Police Station, for the offence punishable under Section 8(C) 20 (C), 29 of N.D.P.S.Act 1985 read with Sec. 188, 269, 270 of Indian Penal Code and Sec. 51 (b) of the Disaster Management Act 2005.
3. He shall not tamper with prosecution evidence.
4. He shall not pressurize the prosecution witnesses.
5. The accused is directed to file before the court the relevant document regarding his permanent place of resident as well as document of his family members.
6. He shall not indulge any criminal activity.

Date:27.10.2020

(Rajeev P. Pande)
Addl. Sessions Judge, Amalner.