

MHKO010022282020

Common Order below Exhs. 4, 6 and 10
in Spl. Case No. 155 of 2020.

1. These applications filed by accused No. 1, 2 and 5 under section 439 of Cr.P.C. as accused are arrested in Crime No. 226 of 2020 under Sections 8 (C), 20 of The Narcotic Drugs and Psychotropic Substances Act, 1985 registered with Gandhinagar Police Station, Kolhapur.

2. It is the case of the prosecution that on 29.6.2020 API Bhandvalkar of Police Station Gandhinagar called informant ASI Ravindra Sadashiv Patil and other police staff in his Chamber and informed them that he has received secret information that one person is coming on two wheeler moped in the area of Uchgaon Bridge for selling Narcotic drug at about 5 p.m. Thereafter said information was communicated to superior officer. Then API Bhandvalkar, informant, other police staff along with panchas and person holding weighing machine went to the spot by following legal procedure. At about 5.10 p.m. they

caught hold accused No. 1 Swapnil Santosh Charaple on Sarnobatwadi to Uchgaon Service road by effecting raid on him. After following due procedure they taken search of accused and found 2 kilo 25 grams Ganja in a plastic bag in his possession having flower and fruiting tops. The police officers seized said muddemal Ganja with two wheeler vehicle, mobile phone and other articles from possession of accused No. 1 under seizure panchanama in presence of panchas. Collected sample for sending sample to C.A. by following legal procedure. Then arrested the accused and filed report against him. On the basis of which above referred crime is registered against the accused No. 1.

3. During investigation, Investigation officer transpired that accused no. 1 had purchased the Ganja from other persons and came to know names of other accused. Thereafter all these accused have been arrested. One mobile handset has been seized from accused No. 2, however no other articles or Narcotic drug seized from the accused No. 2. 1 kilo 718 kg. Ganja has been seized from the accused No. 5 at his instance by following legal procedure.

4. Accused No. 1 has been arrested on 29.6.2020, accused No. 2 arrested on 1.7.2020 and accused No. 5 arrested on 5.7.2020. They were remanded to PCR till 9.7.2020. Since 9.7.2020 they are in MCR. Therefore, they have filed these applications for grant of bail.

5. Following points arise for my determination and I have recorded my findings against for the reasons given thereunder :-

<u>Points</u>	<u>Findings</u>
1. Whether the applicants are entitled to be released on bail ?	– Yes.
2. What order ?	– As per final order.

- REASONS -

As to point no.1 and 2 :-

6. Heard arguments of both sides. Learned counsel Mr. Kothlande, Mr. S. R. Shinde, Mr. Rakhunde submitted that these accused are innocent. They are having no concern with alleged offence. They are implicated in this case on suspicion.

The quantity found in possession is small quantity and not commercial quantity. No narcotic drug has been seized from accused No. 2. Only mobile handset has been seized from accused No. 2. The trial against accused will take its own time. They are not required to be detained in jail by way of punishment. There are no criminal antecedents.

7. The learned counsels for the accused placed reliance on decision in case of *Birbal Prasad @ Birbal Prasad Sah @ Birbal Prasad Sao @ Birbal Sah Vs. The State of Bihar – 2018 ALL MR (Cri) 2293 (S.C.)* wherein the Hon'ble Apex Court observed that, *"Quantity involved in this case is 14 kilograms of Ganja which is a non commercial quantity. Accused not involved in any other case. In such circumstances appellant should be released on bail pending trial."*

8. They further placed their reliance on decision in case of *Jagan Parasram Chavan Vs. The State of Maharashtra, 2014 ALL MR (Cri) 4589* wherein Hon'ble Bombay High Court held that -

"The sessions court has refused bail by holding that there is bar of Section 37 of NDPS Act. As it is not commercial quantity this court hold that relief needs to be given."

9. The learned counsels for the accused placed their reliance on decision in case of **Govindprasad Amritlal Burman Vs. State of Maharashtra 2004 ALL MR (Cri) 635**, wherein it is held by the Hon'ble Bombay High Court that -

“The quantity found with the applicant is less than commercial quantity. So there is no question of application of Section 37 of NDPS Act, having regard to the nature of the offence, I think that accused may be released on bail.”

10. As against this Learned APP Shri. Ayrekar submitted that there is sufficient prima facie evidence of involvement of these accused in serious offence of possessing Narcotic drug. If they are released on bail there is possibility of fleeing the accused from justice. There is possibility of tampering prosecution evidence. There is possibility of repetition of crime. Considering nature of offence their applications for bail may be rejected.

11. On hearing arguments of both sides I have gone through the report Exh. 11 and documents produced by the accused. From which it reveals that the quantity found in possession of accused No. 1 is 2 kilo 25 grams, quantity of Narcotic drug found in possession of accused No. 5 is 1 kilo 718

grams. No narcotic drug has been seized from the possession of accused No. 2 and only mobile handset has been seized from his possession. The quantity of drug found in possession of accused No. 1 and 5 is not commercial quantity. Investigation is completed and charge sheet is filed. The prosecution has not bring on record criminal antecedents of these accused or involvement of these accused in any other case of similar nature. The trial against the accused will take its own time. There is no prima facie evidence in respect of conspiracy between all accused. Considering all these aspects in the light of ratio laid down in cases cited supra relied on behalf of accused it is obvious that in such cases the accused are required to be released on bail and no bail can be denied to such accused merely on the ground that they would indulge in similar crime after release on bail, particularly when there are no criminal antecedents. Hence, considering the ratio laid down in cases cited supra relied on behalf of accused and above referred facts reflected in the recitals of FIR, seizure panchanama I am of the view that accused are entitled to release on bail. Accordingly, I answered point No. 1 in the affirmative and proceed to pass following order :-

ORDER

1. Applications Exhs. 4, 6 and 10 are allowed.
2. Accused No. 1 Swapnil Santosh Charapale, No. 2 Akshay Namdev Patil and No. 5 Tukaram Sakharam Jagtap (Matkari) be released on bail on executing P.B. of Rs.50,000/- each and furnishing solvent surety in like amount by each of them on following conditions.
 - A. They shall not commit an offence similar to the offence of which they are charged.
 - B. They shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer to tamper with the evidence.
 - C. They shall attend court regularly on given dates.

Date : 24.9.2020.

(B.D.Shelke)
Additional Sessions Judge, Kolhapur.