

MHNG010078412020



**IN THE COURT OF SPECIAL JUDGE (NDPS COURT) AND
DISTRICT JUDGE-2 AND ADDL. SESSIONS JUDGE, NAGPUR.**

(Presided over by S.A.S.M. Ali, Special Judge)

Special Case No. : 542 of 2020.

The State of Maharashtra

// **VERSUS** //

Shamim Ejaj and Others.

Applicant/ : **Salauddin S/o Samsuddin Pathan,**
(Accused No.2) Aged about 30 years, Occ. : Private Work,
R/o. Near house of Shankar Patil,
Naya Godam, Ismailpura, Navin Kamptee,
Distt. Nagpur

ORDER BELOW EXHIBIT 4

(Passed on this 26th day of April, 2021)

The present application is filed by the applicant/accused No. 2 Salauddin s/o Samsuddin Pathan under Section 439 of the Code of Criminal Procedure, 1985 for the offences punishable under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station New Kamptee, Nagpur.

2] The case of the prosecution is that, on 23.07.2020 Police Officials of Police Station New Kamptee received an information that, the present applicant was in possession of contraband article in his residential house at Ismailpura. Accordingly, letter was issued to the Deputy Engineer, Kamptee and two panchas were called upon. When the Police Officials visited the house of the applicant, they received another information that the contraband articles is not kept in the house of the applicant but, in the house of one Shamim Ejaj Mohammad Sharif who is residing adjacent to the applicant. Accordingly, the Police Officials visited his house and he was called upon and after giving their identification and informing him that there is an information that there is contraband article is kept in his house, search was taken and about 62 kg. 658 gms. ganja was found from the house of the co-accused which was kept in six different gunny bags. Accordingly, panchanama was prepared and F.I.R. was lodged.

3] According to the applicant, there is no evidence that, he is in conscious possession of the contraband article nor any specific role of the present applicant is attributed and also the place where ganja is seized does not belong to him. He is in jail since 9.09.2020 and therefore, he be released on bail.

4] The application is opposed by the Investigating Officer vide Exh.5 on the ground that, the contraband article was belonging to the applicant who has kept it with main accused i.e. accused No.1 Shamim Ejaj Mohammad Sharif. The contraband article is of commercial nature and

therefore, if the present applicant is released on bail, he may involve in the same nature of the offence again and therefore, he may not be released on bail. So also, he is found during illegal business of contraband.

5] The Learned A.P.P. has also opposed the bail application on the same ground as raised by the Investigating Officer.

6] Heard Mr. C.R. Thakur, the learned counsel for the applicant and Mr. Tapase, the learned A.P.P. for the State. It appears from the record that, initially the information was received in the name of the present applicant, however, on reaching the spot it was transpired that the ganja was not kept in the house of the applicant but, of one Shamim Ejaj Mohammad Sharif, the co-accused in the matter. Subsequently, the contraband article was also seized from the co-accused Shamim Ejaj Mohammad Sharif. As regards the present applicant, apart from the fact that the information was received in the name of present applicant, there is no evidence collected to connect the present applicant in the crime except the statement of the main accused.

7] Some statements of the witnesses were also recorded by the Investigating Officer in which it shows that, one Ajay Meshram had entered into the agreement with one Shamim Ejaj who sold his house in the year July 2020 and at that time one Shamim Ejaj was residing in the house since 2017. But, the fact remains that the entire contraband article was found in the possession of co-accused Shamim Ejaj and not from the present

applicant. There is no evidence that the present applicant has kept the contraband article with co-accused Shamim Ejaj and that contraband article belongs to him. So also, there is no compliance of Section 50 of the N.D.P.S. Act against the present applicant, certainly for the reason that the recovery is not made from him which is mandatory provisions under the Act.

8] It is further case of the prosecution that the applicant is dealing in the business of narcotics drug. However, there is no evidence collected to show that the present applicant is even involved in that business. Admittedly, there is statement of co-accused Shamim, but is not admissible and cannot be taken in the account. Hence, I proceed to pass the following order.

ORDER

- [i] Application (Exh.4) is allowed.**
- [ii] The applicant/accused No. 2 Salauddin S/o Samsuddin Pathan, aged about 30 years, R/o. Near house of Shankar Patil, Naya Godam, Ismailpura, Navin Kamptee, Distt. Nagpur, is hereby released on furnishing Personal Bond of 30,000/- (Rs. Thirty Thousand only) with one local solvent surety of like amount, in Crime No. 373/2020 for the offences punishable under Sections 20, 29 of the N.D.P.S. Act, registered at Police Station New Kamptee, Nagpur.**
- [iii] The applicant is directed to attend the Court dates scrupulously.**

- [iv] He is further directed not to leave the jurisdiction of Nagpur District without prior permission of the Court.**
- [v] He is further directed not to tamper with the evidence and not to influence the witnesses in any manner.**
- [vi] He is further directed to furnish copy of Adhar Card, Ration Card or any document of address proof and cell number at the time of furnishing surety.**
- [vii] In case, any condition is breached by the applicant, the prosecution will be at liberty to apply for cancellation of bail.**

Nagpur.
Dated : 26.04.2021

(**S.A.S.M. Ali**)
Special Judge (NDPS Court) and
D.J.-2 and A.S.J., Nagpur.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order are same word to word, as per the original Order.

Name of Stenographer : Smt. S.R. Chaple