

**Order passed below Exh.5 in Special (NDPS) Case No.1/2017.**

1. The present bail application is filed under Section 439 of Cr.P.C. by applicant-accused for release him on bail in CR No. II-18/2017 registered under Sections 20 (b) and 22 (c) of The Narcotic Drugs and Psychotropic Substances Act, 1985 ( for short ' The Act' ) of Dyane Ramjanpura Police Station, Malegaon.

2. According to the applicant-accused, he is charged under section 20 (b) and 20 (c) of the Act. After completion of the investigation, the charge-sheet is already filed. He has also stated that since 30.04.2017, he is in jail. Moreover, he is not involved in the offence and the quantity of Ganja which is alleged to be seized from him is 1120 grams. That come within the ambit of small quantity. It is also pointed out that there is complete breach of sections 42 to 57. It is further case that he is not habitual offender and notorious offender and permanent residents of Dyane and if released on bail he is willing to co-operate with the Investigating Officer.

3. The application is opposed by the Investigating Officer. The formal objection is taken that if the accused is released on bail, he may involve in the same nature of the offence and he may not obey the law.

4. Heard the learned counsel Mr. G. A. Kulkarni for the applicant-accused and learned APP Shri. B. A. Shewale for the State. Perused the record and proceeding.

5. It appears from the first information report that on 30.04.2017 on the basis of secret information, the NDPS unit of Ramzanpura Police Station arrested the accused and on search found about 1120 grams of Ganja from him. After completion of the investigation, the charge-sheet is filed.

6. It is pointed out by the learned counsel for the defence that the accused is very weak person and patient of cancer. Nothing will be gain if he is remained in the jail as a trial will take its own time. The learned counsel for the accused has also relied upon the judgment of Supreme court in case of **Achint Navinbhai Patel Alias Mahesh Shah: Bipin Shantilal Panchal Vs. State of Gujrat, 2001 DGLS (Soft) 1186** and of Hon'ble Bombay High Court in case of **Lawarance D'souza Vs. State of Maharashtra and another (decided on 17<sup>th</sup> Agusut 1991)**. However, both these judgments are in respect of the conviction after full-fledged trial. Here we are dealing with question as to whether the accused is entitled for bail or not. Mr. Kulkarni, learned counsel for the accused point out that there are two types of offences under the Act which pertains to the quantity of contraband articles seized from the accused. One is commercial and second is small quantity. He further pointed out that as per the notification of the Central Government, the small quantity of Ganja is 1,000 grams and commercial quantity is 20 Kilo grams. In this regard, he has invited the attention of the court towards the seizure quantity of Ganja which is alleged to have been seized from the accused is about 1120 grams. The learned APP has also conceded this fact and argued that considering the nature of the case appropriate order be passed.

7. I find much force in the submissions of the learned counsel for the accused because it is not disputed that the contraband article which is seized from the accused is Ganja and as per the notification of the Central Government it falls under small quantity and not the commercial quantity. The small quantity of Ganja is about 1,000 grams. The seizure although shows that it includes weight of plastic bags also which were about 228 in numbers. Thus, it can be easily inferred that if we deduct the weight of plastic bags, the net

weight of the quantity cannot be more than 1,000 grams Be that as it may, the quantity which is alleged to have been seized from the accused does not fall within the ambit of commercial quantity. The punishment provided under section 20(b) of the Act is for a term of 10 years and fine of 1,00,000/- rupees. Although the offence is serious, but capital punishment is not provided. Last but not the least the investigation is already over and charge-sheet is already filed, therefore, question of the accused tampering the prosecution witnesses does not arise. There is bleak possibility that trial will commence in near future and therefore the further detention of accused in jail may amount to pre-trial conviction. The accused is the resident of Dyane, only, and therefore, the police official of Ramjanpura Police Station can keep a watch on him so that the accused will not be involved in same nature of the offence. Considering all these circumstances, I found that it is a fit case for grant of bail. Hence, the order.

**Order**

- 1) Application is allowed.
- 2) Applicant-accused namely Mahendra Deoram Surywanshi be released on bail on furnishing solvent surety of Rs. 30,000/- with one surety in the like amount on following conditions.

**2.1** He is directed not to influence the witnesses, and not to involve in the same nature of offence and if the police found that he is trying to involve in the same nature of offence, the prosecution is at liberty to approach this court for cancellation of bail.

**2.2** He is directed to attend the court dates scrupulously.

Sd/xx

Malegaon.  
08.08.2017.

( S.A.S.M.Ali )  
Additional Sessions Judge,  
Malegaon.