

MHPU140045772022



SPECIAL CASE No. 01/2023.

State of Maharashtra

Vs.

1- Harish Praful Panigrahy

2- Ajitakumar Kshetrabasi Padhi

ORDER BELOW EXH. 5

This regular bail application has been filed by the applicant-accused under Section 439 of the Code of Criminal Procedure in connection with NCB/MZU/Crime No. 24/2022 registered for the offences punishable under Sections 8(c) r/w sections 20(b)(ii)(C), 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act.

2] The prosecution case in nutshell is as under :-

On 29.06.2022 the Narcotics Control Bureau (N.C.B.), Mumbai Zonal Unit received one secret information about transportation of Ganja/Marijuana in one Volkswagan Polo car. Accordingly, the squad has been formed. They seized 54 Kgs. of brown coloured dry leafes with flowering and fruiting tops of cannabis believed to be Ganja/Marijuana in presence of two panch witnesses on 30.06.2022 at Patas Toll Plaza, Pune-Solapur Express way, Patas, Tal. Daund, Dist. Pune. After following the due procedure the offence has been registered under NCB/MZU/Crime No. 24/2022 NCB of N.C.B. Mumbai Zonal Unit. Both the accused persons have been arrested on the same day.

3] The applicants-accused contended that they are innocent. They did not commit any offence. The offence is not punishable with death or life imprisonment. The N.C.B. team has not made mandatory compliance under sections 42 and 50 of the N.D.P.S. Act. The description of contraband given in Chemical Analyzer's report is not as per the definition of Ganja under the N.D.P.S Act therefore, there are reasonable grounds to raise suspicion about the exact quantity of Ganja. Hence, it cannot be presume that the Ganja was of commercial quantity. Further, the description of contraband in the panchnama is not matching with the description of articles received by Chemical Analyzer. Applicants-accused are the only earning members of their family. Investigation is completed. Custodial detention of both the applicants-accused is not required. They are the permanent residents of the address mentioned in the title column of the application. They are ready to abide by the conditions imposed upon them, if any. Hence, prayed to allow the application.

4] The Investigating Officer and Ld. Spl. P.P. for the State have opposed the application by filing say at Exh.6. It is contended that the offence is serious one. The voluntary statements of both the accused came to recorded on 30.06.2022 under section 67 of N.D.P.S. Act wherein, they have disclosed their role and involvement in procurement, possession, sell, purchase and becoming party to a conspiracy with regard to the seized contraband of 54 Kgs. Both the

accused persons were intercepted by the N.C.B. official and 54 Kgs. i.e. commercial quantity of Ganja has been recovered from their vehicle. Said vehicle is registered in the name of accused No. 1 Harish Panigrahy. As the contraband is of commercial quantity there is a bar on granting the bail under section 37 of the N.D.P.S. Act. The offence is punishable with “not less than 10 years which may extend to 20 years with fine up to Rs. 2,00,000/-. The compliance of section 42 of the N.D.P.S. Act has already been done from the immediate Superior Officer/Gazetted Officer i.e. Superintendent and Zonal Director of NCB, Mumbai. Further, prior to search of both the accused persons provisions of section 50 of the N.D.P.S. Act were explained to them that they have legal right to be searched before the nearest Magistrate or Gazetted Officer. The Chemical Analyzer’s report has specifically concluded the contraband as Ganja and there is no difference in description of contraband. The commercial quantity of Ganja was in conscious possession of both the accused. Both the accused persons are non residents of Maharashtra State and there is possibility that during trial they may flee away or commit similar types of offences. Hence, prayed to reject the application.

5] Heard learned Advocate Mr. R. L. Mate for the applicants-accused and learned Spl.P.P. Mr. S. I. Vasekar for the State. I perused the documents on record. It is pertinent to note that the N.C.B. Officials have seized 54 Kgs of Ganja, which is of commercial quantity.

6] Learned Advocate for the applicants-accused has submitted that at the time of search and seizure the N.C.B. Officials have not complied the mandatory provisions envisaged under sections 42 and 50 of the N.D.P.S. Act. The non compliance of these two provisions itself makes the accused person entitled for the bail. Further, he has pointed out that description of articles given under panchnama and mentioned in Chemical Analyzer's report is different. The description given in the C.A. report shows that they have received "*Heterogeneous mixture of dried greenish brown flowering and fruiting tops, bits of leaves, stem, stalks along with seeds of the plant*". As per the definition of Ganja given under the N.D.P.S. Act, the description is not a Ganja and therefore, it cannot be presumed that the seized contraband is of commercial quantity. In support of his submissions he has relied on following ratios:

- 1- *Lawarance D'Souza Vs. State of Maharashtra and another [1992 CRI. L. J. 399],*
- 2- *Karnail Singh Vs. State of Haryana, [2010(1) Mh.L.J. (Cri.)],*
- 3- *Sarija Banu (A) Janarthani @ Janani and another Vs. State through Inspector of Police [2004 Drugs Cases (Narcotics) 119],*
- 4- *State of Rajasthan Vs. Babu Lal [2009 SAR (Criminal) 626]*
- 5- *Suresh Somraju Ali Vs. The State of Maharashtra [Criminal Application No. 143 of 2011 decided by the Hon'ble Bombay High Court],*
- 6- *Shaileshwar Tulshiram Bansode Vs. The State of Maharashtra [Criminal Bail Application No. 588 of 2013, decided by the Hon'ble Bombay High Court],*

- 7- *SK Raju @ Abdul Haque @ Jagga Vs. State of West Bengal [2018 ALL SCR (Cri) 1554],*
- 8- *Shri. H. R. Barge Vs. Shri. Ashok Manikchand Chankeshwara [Criminal Appeal No. 213 of 1994, decided by the Hon'ble Bombay High Court],*
- 9- *Yogendra R. Virkar Vs. The State of Maharashtra [Criminal Bail Application No. 1601 of 2018, decided by the Hon'ble Bombay High Court],*
- 10- *Sanjay Mohan Garad Vs. The State Maharashtra [Bail Application No. 459 of 2021, decided by the Hon'ble Bombay High Court],*
- 11- *Suresh Maruti Pawar Vs. The State of Maharashtra [Bail Application No. 1599 of 2020, decided by the Hon'ble Bombay High Court] and*
- 12- *Hari Mahadu Valse Vs. The State of Maharashtra [Bail Application No. 2299 of 2019, decided by the Hon'ble Bombay High Court].*

7] The charge-sheet shows that the N.C.B. has received a secret information at 17.30 hrs. on 29.06.2022 which was reduced into writing and Superintendent, N.C.B., Mumbai Zonal Unit has made his endorsement and directed to form a team and take further action on the same note. Thereafter, on 30.06.2022 N.C.B. Officials prepared a team, called two panch witnesses and intercepted the vehicle about which they have received the information. The vehicle bearing No. OR07-U-7200 was intercepted near Patas Toll Plaza on Solapur-Pune Express way within the jurisdiction of Patas, Tal. Daund, Dist. Pune. After following due procedure and they searched the said vehicle and found 27 packets. Out of it, they opened one and found that there was a Ganja in it. They seized total 54 Kgs Ganja/Marijuana after taking the

requisite samples. They were seized as per the rules. Before conducting the personal search of the accused persons, the Team Leader has communicated both the accused persons about their legal rights to be get searched before the Magistrate or Gazetted Officer, but they denied. The notices and replies of both the accused persons have been annexed in the documents. Upon their personal search, N.C.B. Officials found Aadhaar card, Driving licence, R.C. book of the vehicle, ATM Card, Pan Card, Mobile Phones and some cash amount. They have also seized the vehicle i.e. Volkswagan Polo car bearing No. OR07-U-7200 and its key. The voluntary statements of both the accused persons have been recorded. They have been arrested vide two separate memorandums and their arrest have been reported. The N.C.B. Officials further collected description and ownership of vehicle from RTO, Chhatarpur, Bhubaneshwar, Odisha. They also collected the account details from Indian Overseas Bank, Beguniapada Branch. The house of both the accused person have been searched and its panchnamas have been prepared. They have recorded statements of witnesses. The inventory under section 52-A of the N.D.P.S. Act has been carried out by Ld. J.M.F.C. Daund and sent the seized articles for Chemical examination.

8] It is the admitted fact by both the sides that both the accused are residents of Odisha State. It is also seen that the Investigating Officer has *prima facie* carried out the investigation as per the provisions of the N.D.P.S. Act.

9] I have gone through all the authorities cited on behalf of both the accused person. But the facts of cited rulings differs from case in hand hence, with due respect same have not been considered while deciding present bail application.

10] In the present case, the description of seized articles given in panchnama as well as in the inventory by the Magistrate is same, whereas it differs in the Chemical Analyzer's report. It is worth to consider here that the Chemical Analyzer has concluded the seized article as Ganja/Marijuana. It is also worth to consider that the accused persons have found while inter State transporting the Ganja of 54 Kgs. This is a serious fact. Therefore, after considering the entire documents and submission of both the sides, this is not a fit case to grant the bail. Hence, the order.

ORDER

The bail application is rejected.

Date :- 08.06.2023.

(J. P. Darekar)
Special Judge,
Baramati.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same word for word as per original Order.

Name of Stenographer : I. E. Deshmukh
Stenographer (G-1)

Court Name : J. P. Darekar
Additional Sessions Judge,
Baramati, Dist. Pune.

Date of Order : 08.06.2023

Order signed by
Presiding Officer : 08.06.2023

Order uploaded on : 09.06.2023