

: ORDER BELOW EXH.6 IN SPL. NDPS CASE NO.36/2024 :
(CNR No. MHRG15-000424-2024)
(Passed on 20.08.2024)

1) The present application is filed by applicant/accused no.2 under section 439 of Cr.P.C. for regular bail after filing of charge-sheet in respect of C.R.No.73/2024, registered at Goregaon police station, for the offence punishable under sections 8(c), 20(b)(ii), (c), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2) The applicant contended that on 17.05.2024 the informant had lodged report contending therein that, he was on his routine duty at Alibag Crime Branch. At that time, P.I. Balasaheb Khade directed him and other police staff to take action against illegal business narcotic drugs in Roha and Shriwardhan sub-divisions. Accordingly, for the purpose of taking action and conducting raid against the narcotic drug dealer, they took the necessary material like laptop, printer and drug test kit alongwith them in police vehicle bearing registration No.MH-06/AA-0525. At about 21.23 hrs. while patrolling in Shriwardhan Division, they received secret information that two persons aged about 25 to 30 years, are coming on motorcycle for selling narcotic substance Charas on Mhasla-Goregaon road. On receiving said information, they immediately informed said fact to Assistant Police Inspector. Thereafter, Assistant Police Inspector and his team came near the lake at Goregaon village. They saw two persons waiting suspiciously for someone on scooty. At about

00.35 hrs. they apprehended them and took their search, in which 1.35 kg. of Charas was found in their possession.

3) The applicant/accused further contended that the Investigating Officer has completed the investigation and has filed charge-sheet against him. Therefore, nothing is to be recovered or discovered at his instance and prayed that he may be released on regular bail.

4) Ld. A.P.P. filed his say at Exh.84. He contended that the offence committed by the applicant is serious in nature. The applicant was apprehended alongwith narcotic substance Charas. The quantity of Charas found in possession of applicant is more than commercial quantity. He further contended that if the applicant is released on regular bail, there are chances that he may pressurize the witnesses and tamper the evidence of prosecution. He prayed that the application be rejected.

5) Ld. Advocate appearing for the applicant, submitted that applicant has been falsely involved in the offence. The motorcycle in which the narcotic substance was found, does not belong to the applicant. She further submitted that the raiding team has not complied with the provisions of section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985. They have violated the provisions of the Act and relied upon following authorities :-

- (1) **Karnail Singh Vs. State of Haryana, reported in (2009) 8 Supreme Court Cases 539,**
- (2) **Sarija Banu alis Janarthani alias Janani & Another Vs. State through Inspector of Police, reported in (2004) 12 Supreme Court Cases 266,**
- (3) **Sukhdev Singh Vs. State of Haryana, reported in (2013) 2 Supreme Court Cases 212,**
- (4) **Abdul Rashid Ibrahim Mansuri Vs. State of Gujarat, reported in (2000) 2 Supreme Court Cases 513,**
- (5) **Darshan Singh Vs. State of Haryana, reported in (2016) 14 Supreme Court Cases 358,**
- (6) **Shivraj Gorakh Satpute Vs. The State of Maharashtra, decided by Hon'ble Bombay High Court in Bail Application No.2865 of 2022, dated 15.09.2023,**
- (7) **Ashok @ Mulla Ram Vs. State of Rajasthan, Through P.P., decided by Hon'ble Rajasthan High Court in S. B. Criminal Miscellaneous 2nd Bail Application No.7492 of 2023, dated 19.08.2023,**
- (8) **Sushant Sambhaji Rasal Vs. The State of Maharashtra, decided by Hon'ble Bombay High Court in Bail Application No.1760 of 2021, dated 01.02.2023.**

She prayed that the application be allowed.

- 6) **Ld. A.PP appearing for State, submitted that commercial quantity of Charas was found with the applicant. The**

material available in the charge-sheet shows that the Investigating Officer has collected the CDR of the mobile phone of applicant. The CDR Report shows the presence of applicant at the place, where he was apprehended. He further submitted that the material available in the charge-sheet shows that the L.C.B. team had taken a note about the information received by them. The material further shows that the raid team had followed the provisions of section 51 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The raid team after complying all the provisions, have carried the raid, in which they have apprehended the applicant. Therefore, the authorities, relied by the Ld. Advocate appearing for the applicant, are not helpful to him. He prayed that the application be rejected.

7) On perusal of material available on record, it appears that on 18.05.2024 the informant had lodged report contending that on 17.05.2024, they were patrolling for the purpose of taking action against illegal sale of narcotic substance. When they were taking information about illegal business at Shriwardhan sub-division, at that time, he received secret information that two persons aged about 25 to 30 years are carrying narcotic substance Charas for the purpose of selling it. They are bringing it on their motorcycle in the vicinity of Mhasla-Goregaon road. After receiving said information, he informed it to API Poman. Thereafter, API Poman and his team came near the lake at village Goregaon. They saw that two persons are waiting for some one on Scooty. Their actions were suspicious. Therefore, they took

their search, in which 1.35 kg. of narcotic substance was found in the dicky of said scooty.

8) The material available on record shows that the Entry No.281 of L.C.B. is filed alongwith the charge-sheet. The entry shows that they have proceeded from their Control Room as per the information to take action against illegal sale of narcotic substance. The material further shows that the Investigating Officer has further filed the entries of Station Diary alongwith Charge-sheet. The entries shows that the panchas were called after receipt of information for the purpose of raid. The material shows that the information about secret information, was given to senior officer. The material further shows that section 50 notice was given to the applicant, wherein he has given his consent to take his search.

9) The material further shows that the Investigating Officer has collected the C.D.R. of the applicant. The C.D.R. shows the location of applicant at the place, where the raid was carried. The photographs of raid proceeding shows the presence of applicant on the spot. The material available on record further shows that the raiding party has complied with the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985. Therefore, the authorities relied by the Ld. Advocate appearing for the applicant, are not helpful to the applicant. The applicant was found with commercial quantity of narcotic substance Charas and the offence committed by the applicant is serious in nature.

Therefore, there are chances of tampering the evidence of prosecution. Taking into consideration the seriousness of offence and chances of tampering the evidence of prosecution, in my opinion, the applicant is not entitled to be released on regular bail. Hence, I proceed to pass following order :-

: ORDER :

- 1) The application is rejected.

(Dictated and pronounced in open Court)

Mangaon.
Date : 20.08.2024.

(H. K. Bhalerao)
Special Judge, Mangaon
Dist. Raigad