


MHRG170001752021	Special Case (NDPS) No. 14/2021
	Intelligence Officer, Directorate of Revenue Intelligence Mumbai Zonal Unit, Mumbai ... Complainant Vs Meenanath Bodake and others ... Accused

ORDER BELOW EXH. 94

- 1) The accused No. 5- **Mahendra Kumar Nigam s/o Ishwar Nath Nigam** has moved this application under Section 227 of the Code of Criminal Procedure (in short Cr.P.C.) for discharge from the offences punishable under Section 8(c) read with 21(c), 23, 25, 27-A, 28, 29 and 31-A of The Narcotic Drugs And Psychotropic Substances Act, 1985.
- 2) Ld. Spl. APP Shri. Vijendra Mishra also filed say at Exh. 95 of the application and strongly objected the application.
- 3) Heard Ld. Adv. for the accused No.5 and Ld. Spl. APP Shri. Vijendra Mishra for prosecution. Perused record of the case. Following points arise for my determination and my findings on each of them with reason thereon are as under : -

SR. NO.	POINTS	FINDINGS
1.	Whether accused No.5/applicant establishes sufficient ground for discharge under Section 227 of the Cr.PC.?	No.
2.	What order ?	Application is rejected.

REASONS

Point No.1 :

- 4) Learned advocate for accused No.5 argued that, section 25 of the NDPS, Act is not applicable. No any contraband has been

seized from the premises occupied by the applicant/accused No.5. Prima facie, there is no material against the present applicant/accused No.5. Nothing is recovered from the present applicant/accused No.5. The accused No.5 never allowed to store the alleged consignment in his warehouse located at New Delhi. The consignment was seized from Nhava-Sheva port. There is no material to indicate that the accused No.5 and co-accused were conspired for commission of the crime. Prima facie there is no material on record to frame charge against accused. The Ld. Advocate relied upon following authorities :

1. Kunwarpal V/s. State, reported AIR OnLine 2024 DEL 132.

2. Dilawar Balu Kurane V/s. State of Maharashtra, (2002) 2 Supreme Court Cases 135

5) Learned Ld. Spl. APP Shri. Vijendra Mishra argued that, the accused No.5 is playing delay in tactics after releasing him on bail. He failed to remain present in the Court regularly. He also failed to comply the condition No.(ii) of bail order. There was deep rooted conspiracy between accused persons. As per conspiracy the consignment was to be delivered at applicant's godown Delhi. Prima facie there is material against applicant/accused No.5. At this stage defence of the accused is not relevant.

6) On reading of provisions laid down in Section 226 and 227 of Cr.P.C it is clear that, upon consideration of record of the case and documents and after hearing the submission of the accused and prosecution, Court has to see that whether there are sufficient grounds for proceeding against the accused. In the light

of ratio laid down by the Hon'ble Supreme Court in case of ***State of Orissa V/s. Debendra Nath Padhi AIR 2005 SC 359(6)*** at the stage of framing of charge it is not obligatory for the Court to consider in detail and weigh in sensitive balance of facts. While considering question of framing of charge, Court has power to weigh the evidence for limited purpose to find out prima facie case. The Court is to exercise its judicial mind to determine whether a case for trial has been made out or not. In such proceedings, the Court is not to hold the mini trial by marshalling the evidence.

7) In present case, from FIR it appears that, the team of Director of Revenue Intelligence (DRI) effected raid on 07/08/2020 at about 11.15p.m. at Navkar Corporation 2 (Manibhadra) CFS Raigad. They found container No.INKU2267955 imported under bill of entry No.8349682 dated 01/08/2020. On examination of said container in the presence of panch witnesses, the raiding team found 191.60Kgs Heroin of creamish coloured powder with pungent smell concealed inside hollow plastic pipes which were given wooden texture by pasting the same with wooden bark artificially on it. Accused No.1 was the custom house agent of the said consignment and partner in custom broker firm M/s. M.B. Shipping and Logistic Solution. On reference of accused No.2, accused No.1 accepted the job clearance of import consignment of M/s. Sarvim Export. Accused No.1 received the call from accused No.4 in June 2019 inquiring about clearance of import of Mulethi Liquorice Roots from Afghanistan. Accused No.1 agreed to clear import consignment of

accused No.4. Accused No.3 is the proprietor of M/s. Sarvim Export. Accused No.3 met accused No.4 and 5 in Tihar Jail while suffering sentence of previous case. Accused No.3 was released in November 2017 after suffering the sentence. Accused No.3 gave all relevant papers to accused No.4. Accused No.3 suggested name of accused No.2 as a custom broker. Accordingly, accused No.4 contacted accused No.2 and thereafter accused No.1. Accused No.4 used to look-after business operation from the office of accused No.5 at Delhi. 190 packages of Liquorice Roots (Mulethi) weighing 9500 Kgs were imported in the name of M/s. Sarvim Exports from Afghanistan. The seized Heroin was concealed in import consignment of Mulethi Liquorice Roots. Therefore Intelligence Officer, Directorate of Revenue Intelligence Mumbai Zonal Unit, Mumbai filed this complaint.

8) Prima facie it appears that all accused persons were in contact with each other. Investigating officer analysed the said contact numbers. All the accused persons were in contact for committing the offence. Accused No.3 met accused No.4 and 5 in Tihar Jail while suffering sentence of previous case. Accused No.3 was released in November 2017 after suffering the sentence. Accused No.3 gave all relevant papers to accused No.4. Accused No.3 suggested name of accused No.2 as a custom broker. Accordingly, accused No.4 contacted accused No.2 and thereafter accused No.1. Accused No.4 used to look-after business operation from the office of accused No.5 at Delhi. It was also agreed to store the contraband in the accused No.5's godown. Prima facie there is sufficient material against the present accused No.5.

Considering peculiar facts and circumstances of the case the authorities cited by the applicant are not helpful to him. Application deserves to be rejected. Hence, I answer point No.1 in the negative. With this I pass the following order.

ORDER

Application is rejected.

Panvel,
Dated :-31/10/2025.

(Santosh R. Chavan)
Addl. Sessions Judge,
Panvel – Raigad.