

MHRG170021072021



**IN THE COURT OF DISTRICT JUDGE-1 & ADDITIONAL  
SESSIONS JUDGE, PANVEL RAIGAD  
ORDER BELOW EXHIBIT 20 IN  
SPECIAL NDPS CASE NO.183/2021  
(Dated 06/07/2022)**

1] The applicant/accused No.1 Parabhjit Singh, No.2 Manjit Singh and No.3 Hardev Singh have preferred this bail application. The complainant is Intelligence Officer employed in the Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit, Mumbai.

Brief facts of the case are as under :-

2] On 01/07/2021 at about 05.00 a.m. Deputy Director, DRI was telephonically communicated by the Deputy Commissioner of Customs that, at the time of examination of the container No.TDEU2208566, imported under bill entry dated 24/06/2021 by M/s. Sandhu Exports, declared as semi processed talc rock, contains pale brownish colour powder, in concealed form. Accordingly, Yogesh Loke had put an intelligence note to Shri Sanket Kale, Additional Director, DRI, who approved for taking action. Accordingly, a team of DRI officers reached TG Terminal, CFS Nhava Sheva port at about 09.30 a.m. The officials introduced themselves to the panchas and carried out joint examination of the said container. Three

PP bags marked as 100, 193 and 229 tested for pale brownish powder, positive for Heroin.

3] It is further case of the complainant that, the procedure of seizure and panchanama was carried out. The three PP bags weighed were found of 45.88 kgs, 48.14 kgs and 48.12 kgs respectively. The bags were emptied. The bag marked 100 was emptied in carboys as C1 and C2 weighing 25.07 and 20.18 kgs. The bag marked as 193 was emptied in carboys marked B1 and B2 containing powder of 24.21 and 23.93 kgs. The bag marked 229 was emptied in carboys C1 and C2 weighing 22.07 and 26.05 kgs.

4] Thereafter the process of seizure and panchanama was carried out. After opening the container one blue colour folder was found containing documents as copy of Afgan Customs Department, original invoice, original invoice certificate and two transit certificates.

5] The sum and substance of the complaint is that, total 293.81 kgs Heroin containing blue plastic drums marked as A1, A2, B1, B2, C1, C2, D1, D2, E1, E2, F1, F2 to R were seized and deposited in safe custody in CWC ware house Vashi. Further according to the complainant, the accused No.1 was summoned and his statement was recorded u/sec.67 of NDPS Act. According to the complainant accused committed offence u/sec. 8 (C), r.w.21, 23, 27 (A), 28, 29 and 30 of NDPS Act.

6] According to the complainant, statement of accused No.1 was recorded by Hon'ble District and Sessions Judge, Panvel as per section 67 of NDPS Act. The accused No.1 stated that, he was aware that the fact that Heroin was smuggled by way of concealment of consignment under Bill Entry No.4431759 and 4431562. Further the accused No.1 stated that he had done so at the behest of accused No.5 after making inquiry with Omer Farooq Talk Processing Company, Jalalabad, Afganistan. The import consignment was to be destined at Shivpuri, Madhya Pradesh.

7] Further according to the complainant, DRI, Indore Zonal Unit received information, which suggested existence of another warehouse in the name M/s.Sandhu Export, situated at Shop No.10 near Canara Bank, Polaras, Shivpuri, Madhya Pradesh. Thereafter a search was conducted at the said shop. The accused No.2 was summoned and his statement was recorded. Based on their statement they were arrested. In short according to the complainant all the accused persons are involved in the aforesaid crime.

8] Accused Nos.1, 2 and 3 have moved the bail application on the ground that sec.41(2) of NDPS Act was not complied. The second ground is that, accused No.1 had not made a statement that, he had instructed the supplier to conceal 293.81 kgs Heroin. Accused No.5 is responsible for

instructing the supplier to conceal narcotic substance. On these two grounds bail is sought.

9] The complainant DRI Mumbai Zonal Unit has opposed the application by say at Exh.33. It is submitted that, on 01/07/2021, Deputy Director Yogesh Loke received telephonic communication from Deputy Commissioner Customs. Based on the said information Deputy Director DRI had put a intelligence note to Additional Director, DRI who had approved the same. Further it is submitted that, the accused No.1 is holding IEC code for Sandhu Exports.

10] Heard Ld.Adv.Shri Fransis Saldanha for the accused Nos.1 to 3 and Ld.Spl.Prosecutor for DRI. Following point is formulated for determination, the points alongwith findings and the reasons thereto is as under.

<b>SR. NO.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1.	Does applicant/accused No.1 to 3 ... have made out justifiable grounds for grant of bail as per section 439 of Cr.P.C. ?	In the Negative
2.	What order ?	... As per final order

### **REASONS**

**As to point No.1 :-**

11] At the outset it be noted that, the seizure of the contraband substance i.e Heroin is a commercial quantity. The bar u/sec.37 of NDPS Act is attracted. The only submission made on behalf of the accused is that, there is non-compliance of section 42 of the Act. In this regard it be noted that, I am dealing with the bail application and the material before me it to be considered as prima facie material. Already I had stated in detail the complaint of DRI. On 01/07/2021 at 05.00 a.m. the Deputy Director of DRI received a telephonic communication from Deputy Commissioner of Customs. Deputy Director, DRI had put a intelligence note to the Additional Director, DRI which was approved. This is the prima facie material which shows at this stage there was compliance o f the information received.

12] Here, I would like to refer to the decision of the Hon'ble Apex Court in the case of Union of India Vs.Md.Nawaj Khan, 2021 ALL SCR (Cri 1706). In this decision Hon'ble Apex Court has laid down that, the issue whether there was compliance of procedure laid down u/sec.42, is question of fact which is to be raised during the course of trial.

13] If the information which was received is not communicated to the superior, then, it is violation of section 42 of the Act. In the present case, there is specific avernment that, Deputy Director, DRI had put intelligence note to the Additional Director, DRI who had accorded the sanction to

proceed for the search. This prima facie material is sufficient to infer that, section 42 of the Act is not violated.

14] The second ground is that, accused No.5 is responsible for informing the supplier to put the contraband substance in the container. While deciding a bail application such inference cannot be drawn. The reason for the same is that, according to the complaint statement of the accused No.1 was recorded and based on his statement a further search was carried out at a warehouse at Shivpuri, Madhya Pradesh. Thereafter accused Nos. 2 and 3 were apprehended. Hence, I find no substance in the submission that, accused No.1 is not guilty but accused No.5 is responsible.

15] In view of aforesaid reasons I am of the view that, there are no justifiable grounds to grant bail for accused Nos.1 to 3. Hence, I answer point No.1 in negative and pass following order.

**ORDER**

1. Application Exh.20 stands rejected.
2. Application is accordingly disposed off.

*(Directly dictated in open court on the office computer.)*

Panvel  
Date :-06/07/2022.

( J.D.Wadne )  
Additional Sessions Judge,  
Panvel-Raigad

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the stenographer : S.J.Sheth  
Name of the Court : Additional Sessions Judge,  
Panvel Raigad  
Date of dictation : 06/07/2022  
Order signed by the P.O.on : 06/07/2022  
Order uploaded on : 07/07/2022