

ORDER BELOW EXH. 13 IN SPECIAL CASE NO. 09 OF 2022
(Under NDPS Act)

The State of Maharashtra	Prosecution
<i>Versus</i>	
Shiyad A.K. etc. 3	Accused

1. The present successive bail application u/s. 439 of Cr.P.C. is filed by accused no. 2 viz., Najaf Moidu Naufal, who was arrested alongwith accused no. 1 for having committed an offence punishable u/s. 8 (c) and 22 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as NDPS Act, for short)

2. It is the case of prosecution that on 01/03/2022 at about 4.30 a.m. Police Naik B. No. 1399 viz., Amol Bhosale while doing patrolling duty alongwith another police staff found the applicant /accused no. 2 with accused no. 1 wandering suspiciously. Both the accused were interrogated there and during that interrogation, it was transpired that both the accused are residents of Kerala State and they, at the relevant time were staying at Hotel Nilraj of Ratnagiri. The search of their room was taken and during search Narcotic Substance viz., MD weighing about 99 grms. was seized from the luggage of accused no. 1. Thereupon, both the accused came to be arrested by the police. Upon completion of necessary procedure, Crime came to be registered against the accused, vide C.R. No. 101/2022. Thereafter, the accused were granted police custody and thereafter i.e. since 11/03/2022 the applicant/accused no. 2 is in Judicial custody. In the present case, chargesheet came to be filed on 16/04/2022 after completion of investigation.

3. It is the defence of applicant/accused no. 2 that it is not the case of police that the applicant/accused no. 2 is found in possession of any narcotic substance. According to applicant/accused no. 2, he is a college going student, he did not commit any offence and not involved in the present crime. For taking education, he had gone to Delhi and took admission in the college situated near Saket Metro Station, Delhi. He is a resident of Kerala State. He came into contact with accused no. 1 in February, 2022 only while he was travelling in metro and as they both were speaking same language. The accused no. 1 had also helped applicant/accused no. 2 in getting the room for his residence. It is further the case of applicant/accused no. 2 that he is taking higher education like M.B.A. at Delhi and his mother Simat is suffering from illness of foetus. The applicant/accused no. 2 is ready to give bail as per the terms and conditions of this Court. He has no criminal antecedents. It is contended that although he is resident of Kerala State, still he would attend the Court regularly. He belongs to an educated family, therefore, there is no possibility of his absconding. Presently, he is 23 years old and a college going student. In case, the applicant/accused no. 2 is remained behind the bars, then his educational life would be in danger and his future would spoil. He further submitted that he is ready to abide by the conditions that may be imposed upon him. Hence, the applicant/accused no. 2 prayed for his release on bail.

4. The Investigating Officer through learned A.P.P. filed his say at Exh. 14 and contended that the offence is serious in nature. The narcotic substance of 99 Grms viz., Methadone (MD) which is more than the commercial quantity, is found in possession of accused no. 1. The accused no. 2 was very well aware about the same and they both had brought the same for selling purpose. The accused nos. 1 and 2 are

resident of Kerala State and none of their near relatives is staying at Ratnagiri. Therefore, applicant/accused no. 2 would not be available for hearing of the case after his release on bail. In case, the applicant/accused no. 2 is released on bail he would continue his indulgence in similar type of crime which is dangerous to the public at large. It is transpired that the seized muddemal was purchased by accused nos. 1 and 2 from accused no. 3, on payment Rs. 90,000/- through Googal pay. The accused no. 3 is arrested from Kerala State and steps are being taken to file supplementary chargesheet against him. Hence, the I.O. has prayed to reject the bail application.

5. Heard Shri. U.U.Mulye for the applicant who submitted that the contents of F.I.R. make it clear that the muddemal is seized from the possession of accused no. 1 and not from the possession of applicant /accused no. 2, therefore, there is no question of conscious possession. The applicant/accused no. 2 was a co-passenger and he was not aware about the muddemal, therefore, rigour of Sec. 37 of the NDPS Act, in granting bail would not be attracted. The applicant/accused no. 2 is not concerned with accused no. 1. He co-incidently came to Ratnagiri. The mother of the applicant/accused no. 2 is suffering from illness. The chargesheet in this case is filed after completion of investigation. Hence, he prayed that the applicant/accused no. 2 may be released on bail. In support of his submissions the learned Advocate for applicant/accused no. 2, relied on following rulings :

- 1) **Ankush Kumar @ Sonu Vs. State of Punjab (2018 LawSuit (P&H) 1311)**
- 2) **Sujit Tiwari Vs. State of Gujarat & Anr. (2020 LawSuit (SC) 90)**

6. Per contra, learned A.P.P. Shri. A.A.Phansekar vehemently argued that the offence is serious one. During the course of investigation, it was transpired that the narcotic substance of 99 Grms., which is more than commercial quantity, was recovered from the possession of accused no. 1 and the applicant/accused no. 2, while they were staying at Nilraj Lodge at Ratnagiri. During investigation, it is further transpired that both the accused were living together since long. They are well acquainted with each other and were continuously in contact with each other through the telephone. Both of them belongs to the same State i.e. Kerala. They travelled together from New Delhi and reached Ratnagiri with an ulterior object and stayed in the lodge at Ratnagiri. It is further transpired that the narcotic substance of 99 Grms., was purchased by both these accused from accused no. 3, at price of Rs. 90,000/-. The accused no. 3 has already been arrested and chargesheet is likely to be filed against him within next few days. Considering the facts and circumstances of the present case, it cannot be said that the same are such so as to satisfy the Court that there are reasonable grounds for believing that the applicant/accused no. 2 is not guilty of these offences and he is not likely to commit any offence while on bail. Therefore, the rigours of Section 37 of NDPS Act fully applies to the case in hands. It is next argued that in view of the presumption u/s. 54 of NDPS Act also, the accused cannot be enlarged on bail. It is lastly argued that the instant bail application is successive one, came to be filed in absence of change of circumstances. Therefore, the same is not maintainable. The learned A.P.P. accordingly prayed for rejection of the bail application.

7. I reflected over the submissions made by the learned Advocate Shri. U.U.Mulye for applicant/accused no. 2 and the learned

A.P.P. Shri. A.A.Phansekar for the prosecution. I have also gone through the entire record and proceeding.

8. In the instant matter without going into the merits of the case, I would like to consider the aspect of maintainability of the application as agitated by the learned A.P.P. for the prosecution. It is the matter of record that on previous occasion, the present applicant/accused no. 2 had moved a bail application Exh. 7 for his release on bail. At the relevant time, the instant proceeding was pending before the learned Addl. Sessions Judge, who was pleased to reject the bail application on the merits. At the relevant time, all the grounds raised in the instant bail application were also raised and considered while rejecting the bail application Exh. 7, vide order dated 17/03/2022. Although, post to the passing of the earlier order on bail application Exh. 7, chargesheet came to be filed and the matter is assigned to this Court for its disposal, however, that does not mean that there are substantial change of circumstances so as to entertain and consider the instant bail application.

9. In case of successive bail application the Hon'ble Bombay High Court while dealing with an identical issue in case of **Ashok Pundalik Gavade Vs. State of Maharashtra 2019 SCC Online : dated 30/01/2019 referring to State of Maharashtra Vs. Buddhikota Shbha Rao (AIR 1989 SC 2292)**, was pleased to observe that “**there is an embargo on filing repeated bail applications on same facts ensure some degree of finality to the order passed and maintained judicial discipline and propriety.**” It was noted that the present application was not filed on the ground of change in circumstances. It was observed, “

the mere fact that some of the grounds which were available were not raised in the previous application or that the said grounds are not reflected in the previous order would not justify entertaining subsequent bail application.” In such view of the matter the application was rejected. In short, the present successive bail application for want of substantial change of circumstances is not maintainable.

10. Assuming the maintainability of the instant bail application and as regards the aspect of merit, it can be noted that in the present case, the applicant is accused no. 2 against whom charges are levelled for having committed the offences punishable u/s. 8 (c), 22 (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985. It is the defence of applicant/accused no. 2 that the entire contraband muddemal was recovered from the luggage of accused no. 1, alone. The applicant/accused no. 2, was unaware of such type of illegal activity of accused no. 1. It, however, appears from the record of this case that both the accused have travelled together from Delhi to Ratnagiri. Both the accused are residents of Kerala State. Both the accused stayed together in the same room of the lodge. Therefore, the fact whether the applicant/accused no. 2 was found in conscious possession of contraband article or not, is a matter of merit, and can only be decided upon conclusion of the trial.

11. It is apparent from the F.I.R. and the inventory carried out by the Magistrate that the narcotic substance viz., MD of 99 Grms. was seized from the room stayed and occupied by both the accused i.e. the accused no. 1 and applicant/accused no. 2 as well. The seized contraband article is approximately two times greater in quantity than

the commercial i.e. 50 grms. The NDPS Act is enacted mainly to provide deterrent punishment for the traffickers.

12. The applicant/accused no. 2 is resident of Kerala State. Neither the applicant/accused no. 2 nor his any of relative is residing in this district. Therefore, the possibility of his absconding and not attending regularly the Court on each hearing cannot be ruled out. In view of these peculiar facts and circumstances, the Judgments relied by and on behalf of accused, with due respect, are not helpful to him. Hence, I am of the considered opinion that the applicant/accused no. 2 is not entitled to be released on bail.

13. Therefore, I am inclined to pass the following order.

ORDER

The bail application (Exh. 13) filed by the applicant/accused no. 2 Najaf Moidu Naufal for his release on bail stands rejected.

(Pronounced in the open Court)

Ratnagiri

Date:- 14/06/2022

(M.Q.S.M.Shaikh)

Sessions Judge, Ratnagiri.

I affirm that the contents of this Pdf file order are same words as per original order.

Special Case No. (NDPS) (O. below Exh. 13)	:-	09/2022.
Name of Stenographer	:-	V. B. Joshi.
Court Name	:-	Special Court, Ratnagiri.
Date of Decision	:-	14.06.2022
Order signed by P.O. on	:-	15.06.2022
Order Digitally signed on	:-	16.06.2022
Order uploaded on	:-	16.06.2022