

ORDER BELOW EXH. 11 IN SPECIAL CASE NO. 20 OF 2023
(Under NDPS Act)

The State of Maharashtra	Prosecution
<i>Versus</i>	
Sandip Govind Shivgan & 4 Others	Accused

1. This is an application by accused no. 3 Tausif Asif Mirajkar. The present applicant and two others are prosecuted for the offences punishable u/s. 8(c), 22(b) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as NDPS Act, for short)

2. The accused nos. 1 to 3 allegedly possessed in their clothes, small pouches containing Heroin (brown). The patrolling staff suspected and stopped them. Later, intimated to the police station. P.S.I. Shri. Salunkhe, during personal search of the accused, found with each of them possessed small pouches. Panchas, Forensic Unit and P.I. Shri. Chaudhary (Gazetted Officer) were called at the spot. During test, it was found that the pouches contained heroin (brown). The substance in the pouches was mixed and samples were drawn in presence of panchas. Shri. Chaudhary had asked the accused whether they wanted to be searched in presence of a Magistrate to which the accused responded in negative. It is alleged that the accused nos. 1 to 3 carried the said heroin for being handed over to accused no. 4 for sale.

3. Learned Advocate Shri. M.L.Dingankar for the applicant/accused no. 3 submitted that requirements of Section 50 of NDPS Act were not complied with, personal search of the accused was already conducted before arrival of Shri. Chaudhary (Gazetted Officer), the process of drawing samples is not followed as laid down in Narcotic Drugs & Psychotropic Substances Act (Seizure, Search, Sampling and Disposal) Rules, 2022, the measurement of the quantity as recorded initially and during

inventory prepared in presence of the learned Judicial Magistrate does not tally, weight of the substance measured before the learned Magistrate are higher and statement of accused no. 3 is not admissible u/s. 67 of the NDPS Act.

4. In support of his above submissions, Shri. M.L.Dingankar relied on the following Judgments :

Chand Riyaz Shaikh s/o. Riyaz Shaikh Vs. The Union of India & Anr. (Bail Application No. 3269 of 2022 decided by the Hon'ble Bombay High Court on 13th July, 2023. In the given set of facts and circumstances, due to non-compliance of Section 42 of the NDPS Act, non-observing the proper procedure and drawing samples etc., the accused was held entitled to bail.

Vijaysinh Chandubha Jadeja Vs. State of Gujarat (2011 Cri.L.J. 680) wherein the Hon'ble Supreme Court underlined the importance of strict adherence of the procedure laid down u/s. 50 of NDPS Act.

Amani Fidel Chris Vs. Narcotics Control Bureau (AIROnline 2020 Del 468) wherein after the trial on merits, the Hon'ble High Court found that the procedure adopted by the authorities for drawing samples did not conform to the prescribed procedure. For this and other reasons, the accused was acquitted.

Betty Rame Vs. Narcotics Control Bureau (AIROnline 2023 DEL 547) wherein the Hon'ble Delhi High Court emphasized that the procedure prescribed in standing order regarding taking of samples is based upon certain logic which ought to be respected.

5. Shri. Dingankar further submitted that the quantity of the drug allegedly seized from the accused is less than commercial quantity. Therefore, the rigour of Section 37 of the Act is not attracted. The applicant has no antecedents. He is acquitted in two

criminal prosecutions which were launched against him several years back. He is permanent resident of Ratnagiri. Shri. Dingankar requested for bail as the investigation is completed.

6. On the other hand, the prosecution filed reply at Exh. 12. The learned P.P. Shri. A.A.Phansekar opposed granting of bail. He submitted that the points relating to non-compliance of Section 50, sampling of the drug are matters of fact which need to be assessed during trial. According to him, there is sufficient material to show that the accused have, prima facie, committed the alleged serious offence. He opposed granting of bail to the applicant.

7. Having considered the submissions, this Court is of the view that the points regarding non-compliance of Section 50 of NDPS Act, non-observance of proper procedure of drawing samples, difference in weight of the drug during seizure and during inventory are the facts which need trial of the case on merits.

8. 20 Grms. of heroin is considered as commercial quantity and 1 (one) Gram., is small quantity. The quantity seized from the accused persons is in between 5.93 and 11.34 Grms. Those quantities are greater than small quantity but lessor than commercial quantity. The offences, therefore, are punishable with Rigorous Imprisonment for a term which may extend to 10 (ten) years and a fine which may extend to Rs. 1 (one) lakh. The material on record, prima facie, indicates involvement of the applicant in the alleged offence. However, the rigour of Section 37 has not attracted in this case. The two criminal cases which the accused faced in the past has resulted in acquittal. Those were prosecutions under the provisions of the Indian Penal Code and the Arms Act. Investigation is completed. In these circumstances, this Court is inclined to consider the request for bail favourably. The investigation is also already completed. Hence, the following order.

ORDER

1. The application (Exh. 11) is allowed.
2. The applicant/accused no. 3 viz., Tausif Asif Mirajkar be released on bail in C.R. No. 128/2023 registered at City Police Station, Ratnagiri u/s. 8(c), 22(b) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 on his executing PR bond in the sum of Rs. 50,000/- (Rs. Fifty Thousand only) and on furnishing one or two sureties in the like amount on the following conditions :
 - a) The applicant/accused no. 3 shall not tamper with the evidence and shall not pressurize the prosecution witnesses.
 - b) The applicant/accused no. 3 shall not change present place of his residence without prior intimation to the Court and to the in charge of Ratnagiri City Police Station.
 - c) The applicant/accused no. 3 shall provide details of his two relatives with their phone numbers.
 - d) The applicant/accused no. 3 shall regularly attend the trial and co-operate for early disposal of the case.
 - e) The applicant/accused no. 3 shall not indulge in any criminal activities while on bail.
3. The breach of any of the above conditions will lead to cancellation of bail.
4. Inform the concerned accordingly.

(Pronounced in the open Court)

Ratnagiri
Date:- 29/09/2023

(V.R.Joshi)
Judge, Special Court, Ratnagiri.

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

Special Case No. (O. below Exh. 11)	:-	20/2023. (under NDPS Act)
Name of Stenographer	:-	V. B. Joshi.
Court Name	:-	Special Court, Ratnagiri.
Date of Decision	:-	29.09.2023
Order signed by P.O. on	:-	29.09.2023
Order Digitally signed on	:-	30.09.2023
Order uploaded on	:-	30.09.2023