

ORDER BELOW EXH. 26 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. 2 Aakib Khalid Kazi. 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. Suhel Shaikh for the applicant/accused no. 2 submitted that requirements of Section 50 of NDPS Act were not complied with. The process of drawing sample is not followed correctly. The substance in the pouches were mixed together and thereafter samples were drawn. The weight of the seized substance at the time of seizure and before the learned Judicial Magistrate F.C., Ratnagiri vary.

4. Shri. Suhel Shaikh 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. Suhel Shaikh requested for bail as the investigation is completed.

5. On the other hand, the prosecution filed reply at Exh. 29. 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. According to him, this accused is having transactions with accused no. 4. This suggests that both were on trading in drugs. He emphasized this circumstance. According to him, the circumstances speak for themselves and accused is not entitled to bail.

6. 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.

7. 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 is not attracted in this case. The applicant/accused no. 2 has no criminal antecedents. 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. 26) is allowed.
2. The applicant/accused no. 2 viz., Aakib Khalid Kazi 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. 2 shall not tamper with the evidence and shall not pressurize the prosecution witnesses.
 - b) The applicant/accused no. 2 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. 2 shall provide details of his two relatives with their phone numbers.
 - d) The applicant/accused no. 2 shall regularly attend the trial and co-operate for early disposal of the case.
 - e) The applicant/accused no. 2 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

(V.R.Joshi)

Date:- 09/11/2023

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. 26)	:-	20/2023. (under NDPS Act)
Name of Stenographer	:-	V. B. Joshi.
Court Name	:-	Special Court, Ratnagiri.
Date of Decision	:-	09.11.2023
Order signed by P.O. on	:-	09.11.2023
Order uploaded on	:-	09.11.2023