

**IN THE COURT OF JUDGE, SPECIAL COURT,
RATNAGIRI.**

Special Case No. 20/2023
CNR No. MHRT010004482023

The State

Prosecution

Vs.

Sandeep Govind Shivgan etc. 4

Accused.

Order below Exh. 38.
(Dated 08.01.2024.)

1. Applicants/accused No.1 Sandeep Govind Shivgan and accused No. 4 Jahir Mehamood Kazi have filed this bail application under Section 439 of Code of Criminal Procedure in connection with C.R. No. 128/2023 of City Police Station, Ratnagiri under Section 8(c), 22(b) and 29 of N.D.P.S. Act.

2. The prosecution case is as under.

In the night intervening between 13.05.2023 and 14.05.2023 while complainant Shri. Pravin Barge with police staff doing night patrolling duty, at about 2.00 a.m. they reached at parcel gate of Ratnagiri railway station, they saw history sheeter Sandeep Shivgan, Akib Kaji, Tausif Mirajkar were seen in a suspicious manner. Those persons were inquired they tried to run away. When their personal search was taken in right side of pant pocket of accused Sandeep Shivgan 200 turkey powder small pouches were found, 400 turkey powder small pouches each were found with accused No.2 Akib Kaji and accused No. 3 Tausif Asif Mirjakar. One chilim and 9 tickets of

Konkan railway and some cash was also found with them. On being inquired they told that they brought turkey powder for sale in Ratnagiri for accused No.4 Jahir Mahamood Kaji who in turn was going to sale the same in Ratnagiri.

3. On the basis of his complaint accused Nos. 1 to 4 were arrested on 14.05.2023. Initially they were remanded in police custody till 18.05.2023. Now they are in MCR.

4. Advocate for applicants in his argument stated that the allegations made in FIR themselves clearly shows that there is total non compliance of mandatory provision of Section 42 and 50 of NDPS Act. The alleged recovery of contraband substance is less than commercial quantity. Therefore, the rigour of Section 37 of the Act is not attracted. Statement of accused No.1 is not admissible under Section 67 of NDPS Act. 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 at the time of inventory made before Ld. Magistrate is different. Accused No.1 does not have any criminal antecedent under the NDPS Act. Accused No.4 was not found at the railway parcel gate. No contraband substance was found in his possession. Confessional statement of co-accused has no evidential value. Merely on the basis of entries in bank statement case of prosecution will not stand prove automatically. After taking out stock of pouches from him how they again went with him is not

explained. The Special Case No. 3/2019 is pending against him, but in that case also no contraband is recovered from his possession. They are ready and willing to cooperate with investigating agency. They are permanent resident of Ratnagiri. Investigation is already completed and charge-sheet has been filed and it is numbered as Special Case No. 20/2023. The role of accused Nos. 2 and 3 was also similar. They have already released on bail. Hence, rule of parity applicable to them. Therefore, they are entitled to be released on bail.

5. Prosecution filed its reply to this application at Exh. 29. The Ld. APP Shri. A. A. Fansekar strongly opposed to granting bail to the accused. It is his contentions that, applicant No.1 was caught red handed. At that time, 200 small paper pouches having brown heroin were found in his possession. At the relevant time, police party had no prior knowledge. Accused were caught on suspicion as they are history sheeters. Therefore, police could not bring Gazetted Officer or Magistrate. Immediately Superior Police Officer was called to the spot and mandatory procedure was followed. They were given option to exercise right under Section 50 of NDPS Act. Letter in writing was also given to them about it. At that time, it was informed in writing by them that they do not want to exercise it. The inventory report of Magistrate itself indicates that weight was made together with plastic pouch and seal. Hence, there is variance in weight. From conscious possession of accused contraband articles were seized. All three of them were having separate stock of

contraband substance. They were attempted to flee away from that spot which suggestive of their guilty mind. There are in all 7 cases filed against accused No.1 with Ratnagiri police station.

6. Accused No.4 is a habitual offender. In all 5 cases are pending against him out of them 3 are under NDPS Act. In some offences he was acquitted on the ground of benefit of doubt. It was not his clean acquittal. There is consistent graph of commission of such crimes of him. There is record of financial transaction between him and other co-accused. These circumstances themselves suggesting the possibility of bringing contraband articles for accused No.4. If applicants will be released on bail there is possibility of tampering of prosecution witnesses and evidence. Possibility of repetition of crime can not be ruled out. Hence, this applicant may be rejected.

7. Police of Ratnagiri city Police Station who were doing patrolling duty in that night were aware that applicants are habitual offenders. Before taking search of accused mandatory provisions of Section 50 of NDPS Act is not followed. There is variance in weight of seized contraband articles found at the spot and found in inventory. With all three accused different number of pouches of turkey powder were found. 20 gms. of heroin is considered as commercial quantity and 1 gm as small quantity. The quantity seized from accused No.1 is 4.7 gm. Thus it is of intermediate quantity. That quantity is lessor than quantity seized from co-accused Nos. 2 and 3. Thus role of accused Nos. 2 and 3 is similar that of these

accused. Accused Nos. 2 and 3 are already released on bail. Therefore, the applicant/accused No.1 is also entitled to release on bail.

8. Accused No.4 was not present at the railway parcel gate. No stock of contraband substance was seized from his possession. His name came to surface from other co-accused. Merely because there are entries in his bank account with other co-accused prosecution presuming that those transactions are pertaining to giving advance amount for purchase of contraband substance for him. Therefore, the applicant/accused No.4 is also entitled to release on bail. Hence, I pass following order.

ORDER

1. Application Exh. 38 stands allowed.
2. The Applicants/accused No.1 Sandeep Govind Shivgan and accused No. 4 Jahir Mehamood 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 their executing PR bond in the sum of Rs. 50,000/- (Rs. Fifty Thousand Only) each and on furnishing one or two sureties in the like amount each on the following conditions :
 - a) The applicants/accused Nos. 1 and 4 shall not tamper with the evidence and shall not pressurize the prosecution witnesses.

b) The applicants/accused Nos. 1 and 4 shall not change present place of their residence without prior intimation to the Court and to the in-charge of Ratnagiri City Police Station.

c) The applicants/accused Nos. 1 and 4 shall provide details of their two relatives with their phone numbers.

d) The applicants/accused Nos.1 and 4 shall regularly attend the trial and co-operate for early disposal of the case.

e) The applicants/accused Nos. 1 and 4 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.

(S. S. Gosavi).

Date: 08.01.2024

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. 38)	:-	20/2023. (under NDPS Act)
Name of Stenographer	:-	Sou. P. S. Lad
Court Name	:-	Special Court, Ratnagiri.
Date of Decision	:-	08.01.2024
Order signed by P.O. on	:-	08.01.2024
Order uploaded on	:-	08.01.2024