

MHRT010007412023



IN THE COURT OF JUDGE, SPECIAL COURT, RATNAGIRI

(Presided over by A.M.Ambalkar, Judge, Special Court, Ratnagiri)

NDPS SPECIAL CASE NO. 55 OF 2023.

State of Maharashtra,

Prosecution

Versus

Ajay Rajendra Kanekar & ors. 4

Accused

Order Below Exh. 35

(Dictated and delivered in open Court on 25/01/2024)

(1). Applicant / accused no.1 Ajay Rajendra Kanekar in Crime No. 86/2023, for the offences under Section 8(c) punishable under section 20(b)(ii)(B), 22(b), 29 of N. D. P. S. Act r.w. 34 of the Indian Penal Code, registered with Sangmeshwar Police Station filed this bail application U/Sec. 439 of Cr.P.C. for grant of regular bail.

(2). It is the prosecution case that on 02.11.2023 police Naik Pankaj Padelkar lodged report and thereby made allegations that he was present in the police station and at that

time, ASI Kambale received secret information that one Kamil Mulla and his friend are coming at the tea stall of one Mustak Mulla for selling some narcotic substance. Therefore, he along with other police staff proceeded towards that spot by vehicles after taking entry of the same in the station diary. They stopped on the Mumbai Goa Highway at some distance from tea stall and they kept watch on the tea stall. They saw one person with one woman reached in front of tea stall by two wheeler. They alighted from the two wheeler and they talked with the tea stall owner and one person who was sitting on the bench in the tea stall and handed over one white colour plastic bag in the hand of tea stall owner. They felt suspicion about it and they reached there. They disclosed their identity as to be police. They gave evasive answers. The police staff restrained them at about 5.50 p.m. Thereafter, panchas were called. PI Gavit gave details of purpose of panchnama to the panch witnesses. PI Gavit asked the suspect his name and address in presence of panch witnesses. The said person told his name to be Ajay Kanekar and told that the woman with him is his wife namely Akshara. The tea stall owner told his name is to be Mustak Ibrahim Mullaji. The person who is sitting on the bench of tea stall told his name to be Kamil Hasan Mulla.

(3). They opened the white bag and one red colour plastic bag inside the said bag. It was open bag. They found one substance having intense smell like narcotic substance. Therefore, they called forensic support unit and dog squad

with its stool kit for primary testing. Thereafter, PI Gavit told to all accused about the provisions of section 50 of NDPS Act and their rights in that regard and issued letter to that effect in Marathi language. The suspects told that there is no necessity of any Gazetted officer and signed to that effect on the letter. He also told to all those suspects about their rights to take personal search of police authorities and panch witnesses. The suspects told that it is not necessary. PI Gavit took personal search of accused Ajay Kanekar. On inquiry he told that the narcotic substances Charas is in the plastic bag. The forensic unit reached there. The dog squad also reached there. The dog namely Victor smelled the bag and gave signal that it is narcotic substance. Weighing machine was brought there. The said Charas with bag was found to be 1038 gms. The said substance was sealed and seized under panchnama. The motor cycle came to be seized. Hence, the report.

(4). The applicant submitted that he has been falsely implicated in the crime. He is not concerned with the said offence. The applicant has no criminal antecedents. The applicant is having twin children out of which daughter is suffering from physical disability. His children are aged about 10 years only and depending upon him. Presently, his wife alone is taking care of said kids and he is facing difficulty. Now there is nobody to earn for livelihood. He will not abscond and will not pressurize the witnesses. He will abide by the conditions imposed by the Court. Finally, he prayed to allow

the application.

(5). Investigating Officer filed say at Exh.36 and strongly resisted the bail application and submitted that if the applicant is released on bail he will commit similar offence. He may abscond. Offence is serious one. He may pressurize the witnesses. He may sell the narcotic substance to school children. Finally, prayed to reject the application.

(6). Heard learned Advocate for the applicant Smt. P. C. Chavan and learned APP Shri. A. A. Fansekar for the State. Perused the application, say and documents. Ld. Advocate for applicant relied upon the judgment of Hon'ble Bombay High Court in Bail Application No.1450 of 2023, Sunil Shishupal Nayak Vs. State of Maharashtra, decided on 23 October, 2023.

(7). On perusal of FIR and police investigation papers it appears that the quantity of Narcotic substance which came to be seized is more than 1 kg. and it is a commercial quantity. As per the allegations made by prosecution, the present applicant was found while handing over the bag of Charas to accused no.3. The investigation papers clearly show that the prosecution has made out *prima facie* case against the applicant.

(8). Considering the quantity of Narcotic substance,

there is clearcut bar u/s. 37(1)(b) of the N.D.P.S. Act, 1985. In such cases, it is the duty of applicant/accused to show that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail and the present matter, the applicant failed to show these requisites. Therefore, the applicant cannot be said to be entitled to grant of regular bail. In the result, I proceed to pass following order.

ORDER

1. Application Exh.35 stands rejected.
2. Inform the concerned accordingly.

Date: 25.01.2024

(A.M. Ambalkar).
Judge, Special Court, Ratnagiri.

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

Case Number		NDPS Spl.Case No. 55/2023
Name of Stenographer	:-	Shri. Rajesh G. Rahate
Name of Court	:-	Judge, Special Court, Ratnagiri.
Date of Dictation	:-	25.01.2024
Order signed by the P.O. on	:-	25.01.2024
Order uploaded on	:-	25.01.2024