

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. 38

(Dictated and delivered in open Court on 18/04/2024)

(1). Applicant / accused No.3 Mustak Ibrahim Mullaji in Crime No.86/2023, for the offences punishable under Section 8(c) r.w. 21(c), 22(c), 29 of N. D. P. S. Act and section 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 09.10.2023 police Head Constable Sachin Kamerkar 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 applicant was sitting on the bench in the tea stall. The person who alighted from motor cycle handed over one white colour plastic bag in the hand of tea stall owner i.e. applicant. 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 i.e. present applicant told his name is to be Mustak Ibrahim Mullaji.

(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 motorcycle 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 running tea stall. The applicant is sole earning member of his family and his family is depending upon him. The applicant is resident of Kasaba Sangmeshwar and will not abscond. During personal search of applicant, nothing was found in his possession. He will not pressurize any witnesses. He will abide by the conditions imposed by the Court. He is suffering from ailments. Investigation is completed and charge-sheet has filed in the Court. It is further submitted by the accused that he is suffering from Tinnitus, Vertigo and many times he had been taken to hospital for treatment and for these reasons, it has

become difficult for him to stand and to sit. It is further submitted that investigation is almost completed. The applicant is ready to obey the condition imposed. Hence, he prayed to allow the application.

(5). Investigating Officer filed say at Exh. 44 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. Finally, prayed to reject the application.

(6). Heard learned Advocate for the applicant Shri. S. S. Shaikh and learned APP Shri. A. A. Phansekar for the State. Learned Advocate for the applicant Shri. S. S. Shaikh filed medical prescription along with list at Exh.59 and written notes of arguments at Exh.56. Perused the application, say and documents.

(7). Ld. APP relied upon following judgments.

1. Union of India Vs. Rattan Mallik @ Habul, (2009 Cri.L.J. 3042).
2. State of Kerala etc. Vs. Rajesh Etc., AIR 2020 Supreme Court 721.

(8). Learned Advocate for the applicant Shri. S. S. Shaikh relied upon following judgments.

1. Dheeren Kumar Jaina Vs. Union Of India, Cri.Appeal No.965 of 2021, decided on 7 September, 2021 by Hon'ble Apex Court.
2. Balwinder Singh Vs. State Of Punjab, CRM-M-19124-2023 (O&M), decided on 6 July, 2023 by Hon'ble Punjab High Court.
3. Amit Singh Honi Vs. State Of Himachal Pradesh, Criminal Appeal No.668 of 2020, decided on 12 October, 2020 by Hon'ble Apex Court.
4. Bharat Chaudhary Vs. Union Of India, Special Leave to Appeal (Criminal) No.5703 of 2021, decided on 13 December, 2021 by Hon'ble Apex Court.

(9). On perusal of charge-sheet, it is clear that the role attributed to present applicant is that he is recipient of packet of *Charas*. As per prosecution story, the police effected raid at the moment when accused no.1 handing over the packet of *Charas* to the present applicant and present applicant was accepting the same. As such as far as possession of contraband is concerned, the allegations are very clear to show the possession of present applicant.

(10). The applicant accused raised medical grounds and submitted that the applicant accused has been taken to Civil Hospital, today also for treatment. On perusal of prescription and bill and other papers, it does not indicates that the accused is suffering from any serious ailments which required very special treatment. On the contrary, it reveals that the prison authority is

taking care of the applicant as and when required.

(11). In the present matter, it is material to note that the offence is serious one. The contraband seized is of commercial quantity. The explicit bar under section 37 of NDPS Act comes in the way of accused for grant of bail unless the accused shows the exception. The charge-sheet does not show any such circumstances that may be said to be helpful to make out exceptional case for the accused. As far as medical ground shown by the applicant is concerned, it also does not show any seriousness which may make him entitled for at list interim bail. It is also material to note that the applicant has not put forth any specification as regards to required treatment from any specialist. Therefore, the judgments cited by the applicant cannot be said to be of any help. Applicant is not entitled to grant of regular bail. Hence, I proceed to pass following order.

ORDER

1. Application Exh.38 stands rejected.
2. Inform the concerned accordingly.

Date: 22.04.2024

(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	:-	22.04.2024
Order signed by the P.O. on	:-	22.04.2024
Order uploaded on	:-	22.04.2024