

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. 71

(Dictated and delivered in open Court on 09/10/2024)

(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 successive 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 further submitted that now there is substantive change in the circumstance. He submitted that accused no.1 who is the prime accused who impact allegedly transported the Narcotic drug while handing over to this applicant, police effected raid, has been released on bail by

Hon'ble Bombay High Court vide order dated 30/08/2024 on the ground that there has been no substantive compliance of section 50 of NDPS Act in respect of all the four accused as there appears printed format of intimations of written waiver is in same hand writing. The Hon'ble Lordship observed that this waiver is not in the hand writing of accused.

(5). The applicant prayed for parity and this change in circumstance is substantive. Finally, it is prayed to allow this application.

(6). Investigating Officer filed say at Exh.72 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.

(7). Heard learned Advocate for the applicant Shri. S. K. Ghag and learned APP Shri. A. A. Phansekar for the State. Perused the application, say and documents.

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

1. State of Himachal Pradesh Vs. Pawan Kumar, 2005 30 AIC 497
2. Akram Khan Gayaz Khan Vs. The State of Maharashtra, Bail Application No.1659 of 2021, decided on 26/02/2024.

(9). Learned Advocate for the applicant Shri. K. S. Ghag relied upon following judgments.

1. Ajay Rajendra Kanekar Vs. State of Maharashtra, Criminal Bail Application No.1458 of 2024, decided on 30th August 2024.
2. Pravin Ananda Rasal Vs. State of Maharashtra, Criminal Bail Application No.1529 of 2022, decided on 22nd December, 2022.
3. Waryam Singh Kartar Singh Vs. The State of Maharashtra & Anr., 2024 ALL MR (Cri) 864
4. Shameem Bano Gulam Kureshi Vs. Union of India & Anr. 2024 ALL MR (Cri) 905.

(10). On perusal of charge-sheet and on perusal of the order passed by the Hon'ble Bombay High Court in Criminal Bail Application of Ajay Kanekar (cited supra), it is clear that the Hon'ble Bombay High Court observed in respect of present matter and it is observed that section 50 of NDPS Act has not been strictly complied. The intimation of waiver is in the form of printed and the blank spaces are filled in the hand writing of police officer. As such, there appears assumption on the part of police that the accused is going to waive his right and brought printed forms. It is further observed that the waiver is not hand writing of all the accused individually. But it is in the same hand writing.

(11). It appears that the Hon'ble High Court pleased to grant bail to accused no.1 on the aforesaid grounds. The present

applicant accused is accused no.3 and he is co-accused. Considering aforesaid facts, it can be said that this is substantive change in the circumstances by which the applicant/accused is claiming grant of bail.

(12). As the order passed by Hon'ble High Court is directly in respect of present matter, it is directly applicable to the present case and therefore I am of opinion that applicant is entitled to grant of regular bail. Hence, I proceed to pass following order.

ORDER

1. Application Exh.71 is allowed.
2. 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, shall be released on furnishing P.R bond of Rs. 50,000/- (Rs. Fifty Thousand Rupees) with surety in the like amount.
3. He shall not indulge in similar activities and shall not tamper with the prosecution evidence.
4. Inform the concerned accordingly.

Date: 09.10.2024

(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	:-	09.10.2024
Order signed by the P.O. on	:-	09.10.2024
Order uploaded on	:-	10.10.2024