



Order Below Exh. 165
(Dated 21/08/2023)

- 1) This is an application under section 439 of Cr. P. C. filed by the applicant/accused, Siddharth Bhikaji Gavhande, for releasing him on bail in Crime No. 752/2021 of Risod Police Station for the offence punishable under section 8(c),20(b)(II) & 29 of the N.D.P.S. Act.
- 2) The prosecution case, in short, is that on 18/10/2021, PSI Santosh Ramesh Nemnar has lodged report on behalf of State in Risod Police Station alleging that on 18/10/2021, when informant and other police personnel were discharging their duty at police station, they received secret information that one Eicher vehicle bearing registration no. MH-28-BB-0867 came from Hingoli transporting the 'Ganja'. Said vehicle is loaded with gunny bags of cattle fodder and beneath those bags, there was 'Ganja'. Upon receiving this information, PSO Sarang Navalkar went alongwith panch Shri Bansod, Nayab Tahsildar, Sandeep Barde, photographer Santosh to Hingoli-Risod road for conducting raid. During search of said vehicle, four persons were found in the cabin including driver. Those are Gotiram Sable, Siddharth Gavhande (applicant/accused), Pravin Chavan and Sandip Chavan. In that vehicle, there were 70 bags of cattle fodder, and beneath thereof, there were 56 bags of 'Ganja' weighing about 11 quintal 50 Kg. Said 'Ganja' was seized and those four persons were arrested by the police.
- 3) On the basis of above said allegations, the offence vide crime No. 752/2021 of Risod Police Station was registered for the offences punishable under section 8(c), 20(b)(ii) and 29 of the N.D.P.S. Act against the accused persons. Applicant/accused was arrested on 19/10/2021 and since then he

is in jail.

4) Read the application and say filed by the prosecution. Heard learned advocate for the applicant/accused and learned APP for the State.

5) Following points arise for my determination, which carry my findings thereon as follows -

Sr. No.	Points	Findings
1.	Whether the applicant/accused has made out the case for grant of bail, as prayed ?	In the affirmative.
2.	What order ?	As per final order.

REASONS

As to Point No. 1 -

6) Learned advocate for the applicant/accused submitted that the accused was arrested on 19/10/2021 and since that time he is in jail. It is further submitted that there are about in all 11 to 12 accused and out of them, 8 accused have been arrested and out of them, the accused Shubham Sable, Sayyad Sabir, Mansur Shah, Sk. Yusuf, Ganesh Hinge, Ganesh Mali, Sandip Supada Chavan and Pravin Supda Chavan are released on regular bail. It is further submitted that he was only the driver of the said vehicle and he was not having the knowledge of the alleged contraband in his vehicle, that he has no concerned with the material transported in the said vehicle. He was simply driver who was driving the truck on the say of owner of the vehicle. It is further submitted that the investigation has been completed and the charge-sheet has been filed. It is further submitted that the applicant/accused is entitled to be released on bail on the ground of parity, as the other co-accused, who are standing on the same footing or



higher footing, have already been released on bail by this Court as well as by Hon'ble High Court. That the applicant/accused was not found in physical or conscious possession of the contraband article i.e. 'Ganja', that he has no nexus with the alleged contraband. It is further submitted that the mandatory provisions of the NDPS Act are not followed by the police during the investigation, that there is no prima facie case made out by the prosecution against the applicant/accused. It is further submitted that the contraband allegedly seized in the offence is not Narcotic or Psychotropic substance under the NDPS Act, that there is no likelihood of commencement of trial in near future.

7) In support of his contention for releasing the applicant/accused on the ground of parity, he relied upon the ratio held in the case of Pravin Supda Chavan v/s. State of Maharashtra in Criminal Application (B.A.) no. 101/2023. The Ld. Advocate for the applicant/accused has also placed on record the orders passed in Bail Applications no.101/2023 and 365/2023 and on the basis of above said contentions, it is submitted that the applicant/accused be released on bail.

8) Learned APP for the State has submitted that the applicant/accused was found present on the spot of incident at the time of raid, that he was caught raid handed on the spot alongwith alleged contraband i.e. 'Ganja'. It is further submitted that the Gazatted Officer was present in the raiding party, that the investigation officer has followed all the mandatory provisions of the NDPS Act at the time of effecting raid and arresting the accused. It is further submitted that gunny bags containing 'Ganja' were found concealed under the gunny bags of grains, that the

applicant/accused was found in conscious possession of the said 'Ganja'. It is further submitted that the present applicant/accused is standing on the different footing than that of the co-accused who have been released on bail, that the specific role has been attributed to him. Therefore, the ground of parity is not applicable to him. It is further submitted that co-accused Abdul Mobin Abdul Samad, who is absconding, was constantly in touch with the present accused and the applicant/accused has changed the Chasis no. and Engine No. of the said vehicle and he has also changed the color of the said vehicle and as such the offence punishable under section 420 and 201 of the IPC is applicable against him. It is further submitted that if he is released on bail, there is possibility of pressurizing the prosecution witnesses and tampering with the prosecution evidence. There is possibility of his absconding, that the other accused are still absconding. It is further submitted that there is prima facie case is made out against the applicant/accused, therefore the charge-sheet is filed against him. There is CA report confirming that the contraband found in possession of the applicant/accused was 'Ganja', which comes within the purview of definition of Narcotic drugs. On all these grounds it is submitted that the accused is not entitled to be released on bail.

9) As per the provisions of the Section 37 of the NDPS Act there is specific bar for grant of bail to the accused against whom the prima facie case is made out. The applicant/accused is claiming to be release on bail on the ground of parity. On going through the copies of the orders in the bail applications referred above in this case, it appears that co-accused Shubham has been released on anticipatory bail vide Bail Application no. 478/2021, co-accused Ganesh Mali has been released on bail vide Bail



Application no. 533/2022, co-accused Sheikh Yusuf Sk. Suleman has been released on bail vide order below Exh. 71 in S.T. no. 24/2022, co-accused Syd. Sabir Syd. Kadir has been released on bail vide Bail Application no. 123/2021, co-accused Ganesh Hinge has been released on bail in Criminal Application (B.A.) no. 891/2022 by Hon'ble High Court, co-accused Mansur Shah Sardar Shah has been released on bail in Criminal Application (B.A.) no. 838/2022 by the Hon'ble High Court and co-accused Pravin Supda Chavan and Sandip Supda Chavan have been released on bail in Criminal Application (B.A.) no. 101/2023 by the Hon'ble High Court. On the basis of the orders in the above said applications, accused is claiming to be released on bail on the ground of parity. Out of the above said orders, the most relevant order is the order passed by the Hon'ble High Court in Criminal Application (B.A.) no. 101/2023 releasing co-accused Pravin and Sandip on regular bail. The Hon'ble High Court in the above said order in Para no. 7,8,9 and 12 held as follows-

7. There is no dispute that commercial quantity in relation to NDPS Act for 'ganja' means any quantity greater than 20 kg. The section 2(iii) (b) and (c) defines 'ganja' as the flowering or fruiting or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated, and any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom.

8. Thus the definition of term 'ganja' defines and clarifies that 'ganja' is the flowering or fruiting tops of the cannabis plant excluding the seeds and leaves when not accompanied by the

tops. In the case in hand, as seen from the FIR and the investigation papers, the quantity of 1150 kg of ganja was seized from the vehicle. However, certificate of inventory in respect of seized muddemal, as per Section 52A (3) of NDPS Act, shows that gunny bags weighed 1182 kg 150 gram and contain greenish coloured leaves. It appears that when the gunny bag measured with the help of electronic weighing machine produced by the Measurer, there are 56 bags and each containing approximately 6 to 11 bundle in each bag. All the 56 bags are opened with seal then the bundled in it are checked and it was measured alongwith sac and bags. On measurement, the alleged ganja as contained in 56 plastic sacs with the measurement and weight was noted. After weighing the abovesaid ganja, it was seized in the same sacs/bags with seal alongwith the particulars of crime. Thus, it reveals that the samples were not produced before the Magistrate at the time of inventory.

9. The above state of affairs would make it clear that there is nothing on record to prima facie show that before carrying weight of the seized plant of ganja, the investigating officer had separated the flowering or fruiting tops of cannabis plant in order to ascertain the exact quantity of ganja. Infact, there is no mention in the inventory report that the sealed substance includes the flowering or fruiting tops of cannabis plant. This fact becomes further clear from the panchanama also. The seizure panchanama also nowhere shows that the flowering or fruiting tops of cannabis plant were, in any other manner, separated in order to ascertain



the correct quantity of ganja. The Chemical Analyzer's report is forthcoming and it shows that the flowering or fruiting tops of cannabis plant. Thus, on perusal of the material on record shows that what was seized was plant and there was no quantification of flowering tops and without separating the flowering or fruiting tops, the ganja was weighed. As the seized material was not weighed after separating flowering tops and therefore it is difficult to ascertain whether quantity can be said to be commercial. Similar observations were made in the orders in Kallappa Virrapa and Hari Mahadu cases referred supra.

12. The above state of affairs would make it clear that there is nothing on record to prima facie show that before carrying weight of the seized plant of ganja, the investigating officer had separated the flowering or fruiting tops of cannabis plant in order to ascertain the exact quantity of ganja. Infact, there is no mention in the inventory report that the sealed substance includes the flowering or fruiting tops of cannabis plant. This fact becomes further clear from the panchanama also. The seizure panchanama also nowhere shows that the flowering or fruiting tops of cannabis plant were, in any other manner, separated in order to ascertain the correct quantity of ganja. The Chemical Analyzer's report is forthcoming and it shows that the flowering or fruiting tops of cannabis plant. Thus, on perusal of the material on record shows that what was seized was plant and there was no quantification of flowering tops and without separating the flowering or fruiting tops, the ganja was weighed. As the seized material was not weighed after separating flowering tops and therefore it is difficult to ascertain whether quantity can be said to

be commercial. Similar observations were made in the orders in Kallappa Virrapa and Hari Mahadu cases referred supra.

After making the observations as above, the Hon'ble High Court released the co-accused Pravin Chavan and Sandip Chavan on regular bail. As per the prosecution case, at the time of raid when they intercepted Truck no. MH-28-BB-0867, they found accused Gotiram, Siddharth, Pravin and Sandip in the said vehicle and the police have also found 70 bags cattle fodder and under the said 70 bags, there were 56 bags of white plastic color containing 11 quintal 50 Kg. Ganja. It means that at the time of raid the above four accused persons were found on the spot. It is to be noted that out of them the accused Pravin Supda Chavan and Sandip Supda Chavan have been released on bail by the Hon'ble High Court by order in Criminal Application (B.A.) no. 101/2023. It appears that, when the co-accused Pravin and Sandip, who were standing on the same footing with the present applicant/accused have already been released by the Hon'ble High Court, certainly on the ground of parity, the applicant/accused can be release on bail. The observations made by the Hon'ble High Court are binding on this court and on the basis of the same observation the applicant/accused can claim ground of parity. Apart from the co-accused Pravin Chavan and Sandip Chavan the other co-accused have also been released on regular bail as well as anticipatory bail as referred above.

10) Therefore, in view of the observations by the Hon'ble High Court in the Criminal Application (BA) no.101/2023, the applicant/accused is entitled to be released on bail on the ground of parity. Hence, I pass the following order.



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NDPS Case No. 24/2022
State of Maharashtra v/s. Gotiram & Ors.
CNR No. MHWS010005702022

ORDER

- 1] The application Exh. 165 is allowed.

- 2] The applicant Siddharth Bhikaji Gavhande, in connection with Crime No.752/2021 registered with Risod Police Station, District Washim under Section 8(c), 29, 20(b)(ii) of the Narcotic Drugs And Psychotropic Substances Act, 1985, shall be released on bail on his furnishing PR bond of ₹25,000/- with one surety of like amount.

- 3] The applicant shall report to the concerned Police Station once in a month on first Saturday between 11.00 a.m. to 1.00 p.m.

- 4] The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the present case.

- 5] The applicant shall furnish his cellphone numbers address with the address proof. Additionally, he shall furnish the names of his two relatives and their address with the address proof.

Washim.
Date: 21/08/2023.

(Rajeev P. Pande)
Sessions Judge, Washim.

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CERTIFICATE

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

Name of Stenographer :- P.P. Karanjkar, Stenographer (Grade-II)

Name of Court :- Principal District & Sessions Judge,
Washim, Dist. Washim.

Date of Judgment/ Order :- 21/08/2023

Judgment/Order signed by :- 21/08/2023
the Presiding Officer on

Judgment/Order uploaded on :- 21/08/2023