

Crime Branch, Property and Anti Narcotic Cell. He has stated that, on 29/06/2018, he received secret information that a truck bearing no.PB-07-AF-5029 was expected to come within the jurisdiction of Kalamboli Police Station between 1.00 a.m. to 3.00 a.m. on 30/06/2018. The present applicant was named as the driver. His clothes were also described. The informant immediately told Sr. PI Ravindra Budhwant about said information. Thereafter, the informant went to his office. The information was recorded in the Information Book. A copy of the information was taken and a report in respect of the information was prepared by API Santosh Mutkule. A copy of that report was submitted to Sr. PI Ravindra Budhwant. The police party arranged to conduct raid pursuant to the information. Two panchas were called. The raiding party went to the spot. At around 1.30 a.m. according to the information a truck passed through that area which was intercepted. Two persons were travelling in that truck. The applicant was travelling in that truck. Both these accused were informed about their right to be searched before a Gazetted Officer u/sec. 50 of The Narcotic Drugs and Psychotropic Substances Act, 1985. The accused were arrested. Further in search of truck showed that there were three gunny bags containing some parts of Opium

Plant. Three gunny bags contained 12 kgs, 10.900 kgs and 4.550 kgs of the contraband. 50 gm samples from each of these three gunny bags were taken. The samples were sealed with signature of panchas and thereafter the offence was registered on the allegations that, the accused were transporting 27.450 kgs. of Opium Plant. The offence was registered u/sec. 8 (C), 20, 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985. The applicant was immediately arrested and since then he is in custody. The investigation was carried out and the charge-sheet is filed. The chemical analysis report of the contraband mentioned "Morphine along with other opium alkaloids are detected in exhibit nos. (1), (2) and (3), Exhibit nos. (1), (2) and (3) falls under section 2 (xviii) of NDPS Act 1985". The charge-sheet contains statements of leading party members.

5. Heard Mr. Ayaz Khan, Ld. Counsel for the Applicant, Mr. S.H. Yadav, Ld. APP for the State/Respondent.

6. Mr. Ayaz Khan submitted that, the chemical analysis report along with Schedule given under NDPS Act shows that, contraband recovered from the accused falls in the category of non commercial

quantity. He submitted that, the Hon'ble Supreme Court has already taken a view that in such cases, generally bail should be granted. He further submitted that, there is non compliance of mandatory provisions under Section 42 of the NDPS Act. He further submitted that, the actual raid does not show that, the applicant was driving the truck or he was in possession of this contraband.

7. On the other hand, Ld. APP opposed grant of bail and he submitted that, there is compliance of the mandatory provisions of the NDPS Act. He submitted that, both the accused were apprised of their rights u/sec. 50 of The Narcotic Drugs and Psychotropic Substances Act, 1985.

8. I have considered these submissions. From the facts of the case, at this stage it is not necessary to decide as to whether the mandatory provisions under NDPS Act are complied with or not. The prosecution case is that, both the accused were found in truck. The information mentioned that, the truck was driven by the present applicant. However, the FIR does not specify so when the actual raid was conducted. No doubt the applicant was found travelling in the truck.

Therefore, at this stage his connection with the contraband cannot be doubted. Of course, whether he was possessing contraband consciously or not will have to be decided during the trial.

9. Ld. Counsel for the applicant relied on the judgment of the Hon'ble Supreme Court in case of **Birbal Prasad Alias Birbal Prasad Sah Alias Birbal Prasad Sao Alias Birbal Sah Vs. The State of Bihar in (2018) 11 Supreme Court Cases 488** wherein the Hon'ble Supreme Court had noted that the quantity involved in that case in respect of ganja was a non commercial quantity and therefore, bail was granted to the accused.

10. Mr. Ayaz Khan thereafter relied on another order of the Hon'ble Supreme Court passed in **Special Leave to Appeal (Cri) No (s) 548/2008 in Ajay Vs. State of Madhya Pradesh Alongwith Criminal Appeal 930/2008 in case of Ajay Vs. State of Madhya Pradesh**. The Hon'ble Supreme Court has passed the following order ;

“Leave granted.

Keeping in view the report of the FSL stating that the powder in the packet contained only 2.07% of diacetylene

morphine out of the total quantity of 10.35 grams seized by the respondent and keeping in view the decision of this court in E.Micheal Raj vs. Intelligence Officer, NCB ; [2008 (2) LRC 102], we are of the opinion that the quantity of contraband found in the possession of the appellant being less than the commercial quantity, he could not be denied bail, particularly, when he is in custody since 08th May, 2007. The petitioner shall, therefore, be released on bail furnishing bail bond Rs.10,000/- with two sureties each of the like amount to the satisfaction of the trial court.

The appeal is allowed.”

11. This order was passed on 16/05/2008, thus the accused in that case was in custody more or less for a year.

12. In the present case, the chemical analysis report clearly mentions that, the offence u/sec. 2 (viii) of NDPS Act was committed by the accused. The said section would relate to the penal section 15 of the NDPS Act where the punishment provided under Sub Clause (b) is Rigorous Imprisonment for contravention which may extend to 10

years with fine which may extend to Rs.1 Lakh. Thus, there is no minimum punishment provided under that Section.

13. Ld. APP stated that, there are no criminal antecedents against the present applicant. Therefore, in view of the orders passed by the Hon'ble Supreme Court referred to herein above and also taking into consideration that, the applicant is in custody since 30/06/2018, I am inclined to grant bail to the present applicant. Hence, the following order.

ORDER

1. The Applicant is directed to be released on bail in connection with C.R.No.113/2018 registered with Kalamboli Police Station, Navi Mumbai, on his furnishing P.R.Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties in the like amount.
2. Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)