

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

925 BAIL APPLICATION NO.1392 OF 2020

MANOJ RUPSING SOLANKI (BARELA)
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Raje Vikrant P.
APP for Respondent : Mr. S B Narwade

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CORAM : V.K. JADHAV, J.
Dated: December 16, 2020

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PER COURT :-

1. The applicant is seeking regular bail in connection with crime No.44 of 2019 registered with Songir police station, District Dhule for the offences punishable under Sections 8(c), 20(b) and 22 of the N.D.P.S. Act. His application with similar prayer Exh.3 in Special Case No.144 of 2019 came to be rejected by the learned Additional Sessions Judge-3, Dhule vide order dated 4.1.2020.

2. Learned counsel for the applicant submits that on 30.8.2019 during the course of the patrolling as usual by the police party, travel bus was searched. It has been

alleged that in the dickey of the said travel bus two air bags containing 26 kilograms of Ganja kept in plastic bags was found. Learned counsel submits that the applicant allegedly was travelling in the said travel bus as a passenger. The applicant was not the sole passenger in the said travel bus at the relevant time. Learned counsel submits that the dickey of the travel bus is on the back portion of the bus and opening of the said dickey is from the back side itself and there cannot be access to the said dickey of the travel bus from inside of the bus. Learned counsel submits that allegedly the applicant has boarded the said travel bus from Palasner at about 1.00 am. On the basis of the statement of the driver, it has been alleged that those bags belongs to the applicant. Learned counsel submits that it is difficult even for a driver at such a odd time if the passenger has boarded the bus in transit to recognize the luggage as belonging to a particular passenger. Learned counsel submits that even on seizure of those bags, no article was found indicating that those bags belong to the applicant. Learned counsel submits that there is no

conscious possession of the applicant. So far as said quantity of Ganja is concerned, there is no criminal history. The applicant is in jail in connection with the said crime since 30.8.2019. The applicant is having a fixed place of residence at Pendharniya Taluka Varla, District Badwani (Madhya Pradesh) since birth. In order to substantiate the same, the applicant has placed on record the documents i.e. mark sheet cum HSC certificate, Aadhar card, caste certificate, Ration card and Parivar Patra. The applicant is available for trial, if released on bail.

3. Learned A.P.P. has strongly resisted the application on the ground that the applicant caught red handed while travelling with the bags containing commercial quantity of Ganja. It is for the trial court to consider as to whether the said possession of the applicant was conscious possession. Prima facie, there is strong case against the applicant. In view of the bar to section 37 of the NDPS Act, the applicant is not entitled to be released on bail. On the basis of the

statement of the driver and cleaner of the said bus, it has been revealed that those bags containing commercial quantity of the Ganja belong to the applicant. Application may be rejected.

4. On going through the allegations made in the complaint and on perusal of the charge-sheet, it appears that at the relevant time, the applicant was travelling as a passenger in a travel bus and he was not the only passenger in the bus. Furthermore, said two air bags having no locks allegedly containing commercial quantity of Ganja. However, those bags were kept in the dickey of the said bus and said dickey can be operated only from the outside of the bus. It has been revealed during the investigation that the applicant has boarded the said bus in the odd hours at about 01.00 am during transit. Prima facie, it would be difficult for the driver or the cleaner to recognize the luggage carried by the applicant while boarding said bus. Furthermore, even though commercial quantity of ganja was seized from the said two air bags having no locks, there are no other

articles from the bags came to be seized to indicate that those bags belong to the applicant. In view of the same, I do not think that there was conscious possession of the applicant over the said bags.

5. It is plain from a bare reading of the non obstante clause in the Section and sub-section (2) of section 37 of the NDPS Act that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under section 439 of the Code of Criminal Procedure but also subject to the restrictions placed by sub-clause (b) of sub-section (1) of section 37 of the NDPS Act. There are twin conditions namely (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail.

6. In a case **Union of India Vs. Ratan Malik @ Habul** reported in AIR 2009 SC (Supp) 1567 in

paragraph no.13 the Supreme Court has made following observations :-

“13. It is plain from a bare reading of the non-obstinate clause in the Section and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the [NDPS Act](#) is not only subject to the limitations imposed under [Section 439](#) of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by sub-clause (b) of sub-section (1) of [Section 37](#) of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz; (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds". The expression 'reasonable grounds' has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [Vide Union of India Vs. Shiv Shanker Kesari²] Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the [NDPS Act](#).

7. In the instant case, as discussed above, there are reasonable grounds for believing that the accused is not guilty of the alleged offence. So far as these observations are concerned, those are limited to the extent of

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granting bail to the applicant and it is for the trial court to consider the case against the applicant on its own merits.

The applicant has also placed on record the various documents as detailed in the submissions made on behalf of the applicant indicating his permanent residence in the State of Madhya Pradesh. Thus, the applicant is available for trial and there is no possibility of absconding. I am thus inclined to release the applicant on bail. Hence following order :-

O R D E R

- I. Application is hereby allowed.
- II. The applicant MANOJ RUPSING SOLANKI (BARELA) in connection with crime No.44 of 2019 registered with Songir police station, District Dhule for the offences punishable under Sections 8 (c), 20(b) and 22 of the N.D.P.S. Act be released on bail on furnishing personal bond of Rs.50,000/- (Rs. Fifty Thousand) with one solvent surety of the like amount on following conditions:-
 - a) The applicant shall not tamper with the prosecution evidence in any manner.

- b) The applicant shall attend the concerned police station once in a month i.e. on every FIRST Sunday OF EACH AND EVERY MONTH between 2 to 5 p.m. till the conclusion of the trial.

III. Bail application is disposed off.

(V.K. JADHAV, J.)

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