

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

937 BAIL APPLICATION NO. 663 OF 2021

**NANSING S/O CHAMARYA PAWARA
VERSUS
THE STATE OF MAHARASHTRA**

Shri. Chaitanya C. Deshpande, Advocate for the applicant
Smt. D. S. Jape, APP for the respondent/State

**CORAM : M. G. SEWLIKAR, J.
DATED : 7th September, 2021**

1. This is an application under Section 439 of the Code of Criminal Procedure for release of accused on bail in connection with CR No. 66 of 2020 registered with Shirpur Taluka Police Station, Dist. Dhule under Sections 20(B) and 22(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

2. Facts giving rise to this application are that the informant PSI Hanumant Natha Ugale received a tip off that the applicant had stored *ganja* for sale in his house. Thereafter, the applicant complied with the mandatory requirements as required under the NDPS Act and raided the spot of the incident i.e. the house of the applicant. The

name of the applicant was called out by the informant. On taking search of his house a substance similar to *ganja* was found in two drums and one *gunny* bag. The weight of *ganja* was 116.200 kilograms worth Rs. 6,39,100/-. Samples of 100 gram each were taken into separate envelopes they were sealed. Panchnama was drawn and after disclosure of the offence charge-sheet was submitted in the Court.

3. Heard Shri. Chaitanya C. Deshpande, learned counsel for the applicant and Smt. D. S. Jape, learned APP for the respondent/State.

4. Shri. Deshpande, learned counsel raised only one point. He submitted that Chemical Analyzer report was not annexed with the charge-sheet and, therefore, the charge-sheet is incomplete and cognizance taken on the basis of such incomplete charge-sheet is no cognizance. He submitted that on the basis of simply sniffing, one cannot come to the conclusion that the substance found and seized from the house of the applicant was *ganja*. He submitted

that without the Chemical Analyzer report it is impermissible for the concerned Court to take cognizance of the offence. For this purpose he placed reliance on the case of ***Sunil Vasantrao Phulbande and Another Vs. State of Maharashtra*** reported in ***2002 (3) Mh.L.J. 689***. He also placed reliance on the case of ***Manik Sahebrao Chaugule Vs. The State of Maharashtra*** in ***Criminal Bail Application No. 241 of 2017 (Coram: Mrs. Mridula Bhatkar, J.), Mr. Sagar Parshuram Joshi Vs. The State of Maharashtra*** in ***Bail Application (ST) No. 4761 of 2020 (Coram: Sandeep K. Shinde, J.)*** and ***Seema Raju Panchariya Vs. The State of Maharashtra & Anr.*** in ***Bail Application No. 65 of 2018 (Coram – Mangesh S. Patil, J.)***

5. Learned APP Smt. Jape submitted that in the case of ***Sunil Vasantrao Phulbande and Another Vs. State of Maharashtra*** (supra) default bail was granted under Section 167(2) of Cr.P.C. She submitted that the same principle cannot be applied to regular bail after filing of charge-sheet. She further submitted that in the case of ***Rafael Palafox***

Garcia Vs. Union of India & Anr. reported in ***2009 CRI.L.J. 446***, despite filing charge-sheet without Chemical Analyzer report bail application was rejected. She submitted that benefit of technicality cannot be extended to the applicant. She submitted that subsequent to the filing of the charge-sheet, Chemical Analyzer report was filed. She, therefore, prayed for rejection of the application.

6. Admittedly, Chemical Analyzer report was not filed at the time of submission of charge-sheet before the concerned Court. In the case of ***Sunil Vasantrao Phulbande and Another Vs. State of Maharashtra*** (cited supra) following observations are made:

"The Charge-sheet/ report as contemplated under Section 173(5) of the Criminal Procedure Code, forwarded to the Magistrate should be such that on the basis of which Magistrate should be able to proceed further and take cognizance. The documents, which are required to be accompanied with the charge-sheet/report as contemplated under sub-section (5) of section 173 of the Code, therefore, assume importance, without which charge-sheet/ report submitted by the Police under section 173 of the Code would be incomplete and Magistrate also may not be in a position to proceed to take cognizance on the basis of the said report. The

concept of filing of charge-sheet by the Police in the Court must fulfill requirement of section 173(2) and (5) of the Code and it is only after such compliance, report which is filed by the Police in the Court can be construed as complete report under section 173(2) and (5) of the Code. In a given case, certain documents, which are formal in nature, if not accompanied with the report/ charge-sheet may not change the nature of report/charge-sheet contemplated under section 173(2) and (5) of the Code particularly when material is sufficient for the Magistrate to take cognizance of the offence as per provisions of the Code. In prosecution for the offences punishable under sections 20, 22 and 25 of the Narcotic Drugs and Psychotropic Substances, Act, sheet itself is incomplete and such charge-sheet cannot be said to be a charge-sheet as contemplated under Section 173(5) of the Criminal Procedure Code so as to enable the Magistrate (herein the Special Judge under 'NDPS Act') to take cognizance of the offence and, therefore, on this ground also applicant Jay Yogeshwar @ Yogesh Dagu @ Dattu Gaikwad deserves to be released on bail."

7. From the above observations of this Court it is clear that charge-sheet without Chemical Analyzer report is incomplete and on the basis of such incomplete charge-sheet cognizance cannot be taken. It is pertinent to note that no extension was sought under Section 36A of the NDPS Act for want of Chemical Analyzer report. Therefore, as held in the case of ***Sunil Vasantrao Phulbande and***

Another Vs. State of Maharashtra (cited supra), charge-sheet is incomplete and no cognizance can be taken on the basis of such charge-sheet. It is held relying on the case of *Ajit Singh Alias Jeeta & Anr. Vs. State of Punjab* in *Criminal Revision No. 4659 of 2015 of Punjab & Haryana High Court* that non-inclusion of the Chemical Examiner's opinion in the report under Section 173 Cr.P.C. would expose the accused to unfounded dangers imperiling and endangering his liberty since provisions of the NDPS Act in its applicability to a trial and conclusions are stringent in consequence. In the case of *Seema Raju Panchariya Vs. The State of Maharashtra & Anr.* in *Bail Application No. 65 of 2018* (cited supra) it has been held relying on *Sunil Vasantrao Phulbande and Another Vs. State of Maharashtra* (supra) that without the report of Chemical Analyzer charge-sheet submitted by the police under Section 173 of the Code of Criminal Procedure would be incomplete.

8. In the case of *Lakhan s/o Deepak Jedhe Vs. The State of Maharashtra* in *Bail Application No. 318 of 2021*

charge-sheet was submitted without CA report. It appears from the judgment of this Court (Coram : Smt. Vibha Kankanwadi, J.) that the submission was made by the Additional Public Prosecutor the chemical analysis report had been received. This Court released the applicant on bail relying on the case of ***Sunil Vasantrao Phulbande and Another Vs. State of Maharashtra*** (cited supra)

9. This clearly shows from the catena of these decisions that this Court has consistently taken a view that submitting charge-sheet without Chemical Analyzer report is incomplete charge-sheet and on the basis of such a charge-sheet cognizance cannot be taken. In the case of ***Rafael Palafox Garcia Vs. Union of India & Anr.*** (cited supra) test of contraband articles was conducted at the spot on field test kit. In the case at hand no such procedure seems to have been adopted. In this view of the matter, I do not find any substance in the argument of the learned APP. Hence the order.

ORDER

1. Application is allowed.
2. Applicant be released on bail on his furnishing PR bond of Rs. 75,000/- (Rupees Seventy Five Thousand only) with one solvent surety in the like amount in connection with CR No. 66 of 2020 under Sections 20(B) and 22(C) of the NDPS Act registered with Shirpur Taluka Police Station, Dist. Dhule.
3. Application is disposed of.
4. It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

[M. G. SEWLIKAR, J.]

ssp