

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

BAIL APPLICATION NO.1714 OF 2022

1. HARDAYAL SINGH S/O GULAB SINGH KATODIYA
2. JIVAN SINGH S/O AVTAR SINGH CHOPRA
VERSUS
THE UNION OF INDIA

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Advocate for Applicants : Mr. Rajendrraa Deshmukkh (Senior
Counsel) a/w Mr. G. A. Kulkarni i/b Mr. Devang R. Deshmukh.
Advocate for Respondent-UI : Mr. R. R. Bangar h/f Mr. A. T.
Jadhavar (ASGI).

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WITH

BAIL APPLICATION NO.1718 OF 2022

SADDAM AJMERI S/O MUBARIK AJMERI
VERSUS
NARCOTIC CONTROL BUREAU MUMBAI THROUGH ITS
INTELLIGENCE OFFICE NCB UNIT, MUMBAI

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Advocate for Applicant : Mr. Narwadkar M. D.
Advocate/ASGI for Respondent-NCB : Mr. S. S. Deve.

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CORAM : S. G. MEHARE, J.

**RESERVED ON : 16.12.2022
PRONOUNCED ON : 23.12.2022**

ORDER :-

1. The applicants are claiming bail under Section 439 of the Cr.P.C. for the offence registered under Section 8(c) read with Sections 15(c), 18, 25, 27-A, 29 of Narcotic Drugs and

Psychotropic Substances Act, 1985 (in short 'NDPS Act') in Crime No.99 of 2021 registered by the Intelligence Officer, Narcotics Control Bureau, Mumbai Zonal Unit, Mumbai.

2. Applicants Hardayal Singh and Jivan Singh have been allegedly arraigned as accused of possessing narcotics drugs and its seizure from their shops. They have been arrested on 23.11.2021. Applicant Saddam Ajmeri was arrested on 23.11.2021.

3. The prosecution case, in brief, was that on secret information, in the presence of two panchas, a seizure was effected in a shop situated Opposite Lohlangar Gurudwara, Sagam Road, Carrier Co., Hingoli Hyderabad Bypass Road, Kamtha, Nanded. In the said seizure, 111 kg, of Poppy Straw, including Powder and 1.4 kg, of black sticky substance purported to be Opium and cash of Rs.1,55,490/-. In response to the notice, all applicants appeared before the investigation officer. Their voluntary confessional statements under Section 67 of NDPS Act were recorded, and then they were arrested. It has been alleged that they were involved in the conspiracy to procure, possess, transport, sell, purchase, finance, and commit offences under the NDPS Act. It has been alleged that the

quantity of seized Poppy Straw was commercial. The samples from seized contraband were taken for chemical analysis and sent to the concerned laboratories. *Prima facie* evidence was against the applicants.

4. Learned Senior Counsel Mr. Deshmukkh for applicants Hardayal Singh and Jivan Singh has vehemently argued that the report of New Custom House Laboratory, Mumbai, dated 30.12.2021 was that the sample does not show the characteristics of poppy opium. Same way, the second report was also negative. The report dated 23.12.2021 regarding the brown colour dried and ruptured pieces of capsules (straw) answered a positive test for the presence of Morphine, Codeine, Thebaine and Papaverine qualitatively. However, the weight of the samples does not match the seizure of samples taken at the time of the raid. He would vehemently further argue that considering the said quantity under Section 2(xv), the preparation containing not more than 0.2 % of Morphine. It is not included the definition of Opium. Therefore, it cannot be said that it constitutes an offence under NDPS Act. He has further argued that the learned Magistrate, while granting certification of the sealed drugs, found brownish leaves. The Magistrate issued the certification to the inventory under

section 52-A of the NDPS Act. However, section 52A of NDPS Act provides for the disposal of seized narcotic drugs. Reading sub-section (2) of section 52-A of the NDPS act, the arguments appear incorrect. The said sub-section authorizes the Magistrate to certify the inventory. He further argued that the premises where the alleged drugs were seized were locked since it was a Covid- 2019 pandemic. The investigating agency has made a false statement that the accused were asked to open the premises. However, they did not open the premises. Hence, its locks broke open. However, at that time, the applicant was in his office at shop No.33, Nagina Ghat Road, Nanded. Hence, the powers under section 42 (1) (b) of the NDPS Act have been misused. The alleged raid itself is illegal. In a notice under Section 67 of the Act, no crime number was registered. However, in a letter dated 22.11.2021 addressed to the Police Inspector, Police Station Vimantal, Nanded, NCB Crime No.99 of 2021 appeared surprisingly. This seems to be a mess and a misuse of the powers. Nothing surfaced in the investigation about the ownership of the premises where the seizure panchanama was drawn. If it was a conspiracy, it is to be proved in the trial. The licence was in the name of the applicant's mother. He has further argued that Section 42(2) and 50 of NDPS Act has not been complied with, and no copy

was sent to the superior within 72 hours. The statement under Section 67 of NDPS Act is not admissible. He relied on certain case laws. He prayed to grant the bail.

5. Learned counsel Mr. Narwadkar for applicant Saddam adopting the arguments of learned senior counsel Mr. Deshmukh, further argued that the applicant has been arrested on the statement of the co-accused. It has been alleged against him that he was supplying the material. He is a resident of Mandsaur, State of Madhya Pradesh. The photograph was shown in a statement dated 23.11.2021, and a phone number was given, but there was no communication. He has been arrested only on suspicion. Nothing incriminating material is recovered from him. Hence, he may be granted bail.

6. Learned counsel/ASG Mr. Jadhavar for the NCB has vehemently argued that necessary permission for a raid was obtained. The Laboratory Report of brown colour-dried leaves were positive. The relevant compliance has been done. The applicants were served with a notice under section 50 of the Act. The seized quantity was commercial. There are antecedents to the discredit of applicant Hardayal Singh. The crimes under Essential Commodities Act and Maharashtra

Prohibition Act were registered against him. After cancelling the licence also, the contrabands were in their possession. All the applicants had a telephone conversation that prove the link.

7. The other counsel/ASG Mr. Deve for the Bureau, has vehemently argued that applicant Saddam was supplying the contraband. They were doing business systematically even in Covid-2019. They may tamper with the prosecution witnesses. The trial is likely to be opened shortly, and at the most trial may be expedited instead of granting bail.

8. The learned senior counsel, Mr. Deshmukh, relied upon the case of *Tofan Singh Vs. The State of Tamil Nadu (Cri.Appeal No.152 of 2013 with other criminal appeals decided on 29.10.2020)*. It has been held, in that case, that the confessional statement recorded under Section 67 of the NDPS Act would remain inadmissible in the trial of the offence under NDPS Act. The Hon'ble Supreme Court in the case of *State by (NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta and Another; 2022 SCC Online SC page No.47* held that confessional statements recorded under Section 67 of the NDPS Act would remain inadmissible in the trial of the offence

under NDPS Act. Arrest made by the petitioner NCB on the basis of the confessional/voluntary statement of the respondent, co-accused under Section 67 of the NDPS Act, cannot form a basis for overturning the impugned order releasing them on bail. The issue of admissibility of the confessional statement under Section 67 of NDPS Act is no more *res integra*.

9. In the case at hand, the NCB called the accused on serving notice, and then they took the search of the shops wherein the alleged narcotics drugs were found. The record reveals that there were three shops, but they were locked. The accused has a case, the shops which the investigation agency allegedly asked the accused to open the lock, but the accused were not there. Therefore, the seizure contravened section 52A of the NDPS Act. However, the record reveals that the accused were asked to unlock the premises. They informed the investigation Officer that the key was lying with the employee. Hence, the locks were broken with a hammer in their presence on their say. Hence, there appears, no substance in the arguments that Section 52A of the NDPS Act has been violated.

10. The Chemical Analysis Report was that the sample does not show the characteristics of Opium. The samples of Poppy straw sent to the chemical analysis were mostly the same quantity except for a few grams difference. It was a negligible difference in a few samples. Hence, it cannot be said that the samples collected and certified by the learned Magistrate and sent to the chemical analysis were different. Except for the above evidence, the prosecution rests upon the confessional statement of the accused under Section 67 of the NDPS Act. The Law is set at rest that such a confessional statement is inadmissible in the trial and may not be a ground to refuse the bail.

11. The quantity seized from the applicants was commercial quantity. Therefore, clause (ii) of Section 37 of the NDPS Act needs consideration. The Court has held that the confessional statement of the accused is inadmissible. The only ground to refuse the bail would be the likelihood of committing any offence while on bail. The expression “reasonable grounds” has been defined by the Hon’ble Supreme Court in ***Union of India Vs. Shiv Shanker Kesari (2007) 7 SCC 798***. The Hon’ble Supreme Court has observed that the expression “reasonable grounds’ means something more than *prima facie* grounds. It

connotes substantial probable causes for believing that the accused is not guilty of the offence charged, and this reasonable belief contemplated in term points to the existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged. It has also been held in the said case that while considering the bail application with reference to section 37 of the Act, the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of non-guilty.

12. The prosecution has a case that the crime under the Essential Commodities Act and the Maharashtra Prohibition Act has been registered against the applicant Hardayal Singh. It has been tried to argue on the basis of this fact that this is a reasonable ground to believe that he may commit any offence while on bail. In clause (ii) of Section 37, the words have been used that he is not likely to commit any offence while on bail. The past of the accused may be considered, but the prosecution has to produce the material that the accused may commit any offence while on bail. In view of the provisions of Law and absence of material, this Court is of the view that it cannot be accepted at this juncture that the accused/applicants may

commit any offence while on bail. There are no reasonable grounds to believe that the applicants may commit any offence while on bail. The applicants are behind the bar for more than one year. The investigation has been completed. The trial may take its own time. Their further detention would serve no purpose. Given the above discussion, the Court is of the view that the applicants deserve bail. Hence, the following order :

ORDER

- (i) Bail Applications are allowed.
- (ii) Applicant 1. **HARDAYAL SINGH S/O GULAB SINGH KATODIYA**, 2. **JIVAN SINGH S/O AVTAR SINGH CHOPRA** in Bail Application No.1714 of 2022 and Applicant **SADDAM AJMERI S/O MUBARIK AJMERI** in Bail Application No.1718 of 2022 be released on bail on furnishing P.B. and S.B. of Rs.2,00,000/- (Rupees Two Lakh only) each with one or two equal solvent sureties of Rs.1,00,000/- each, in Crime No.99 of 2021, registered by Narcotics Control Bureau, Mumbai Zonal Unit, Mumbai, for the offence punishable

under Section 8(c) read with Sections 15(c), 18, 25, 27-A, 29 of NDPS Act, on the conditions that;

- (a) The applicants shall not tamper with the prosecution witnesses.
- (b) They shall attend the trial on effective dates.
- (c) They shall inform their residential address and cell phone numbers to the police.

(S. G. MEHARE, J.)

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