

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.963 OF 2023

RAVINDRA AMARSING RATHOD
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Nilesh S. Ghanekar
APP for Respondent : Mr. S. B. Narwade
...

CORAM : S. G. MEHARE, J.

DATE : 27-06-2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent/State.
2. The applicant is seeking bail in C.R.No.46 of 2023 registered with Aundha (Nagnath) Police Station, District Hingoli, for the offences punishable under Sections 8(c), 20(b), 29(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act", for short).
3. The police had received a secret information from control room that the contraband was transported in a car. As per the information, the Investigating Officer had conducted raid. The applicant was one of the persons sitting in the car from which three different bags containing packets of ganja weighing 38.60

Kgs. were recovered. The applicant was apprehended on the spot of the incident. The representative samples similar to the contaband were sent to the Chemical Analysis. The flowering or fruiting tops and stalks were sent to the C.A. and the analysis was that it was a ganja. Since the personal search was not taken, Section 50 of the NDPS Act did not come into play. However, the learned counsel for the applicant would submit that Section 42 of the NDPS Act has not been strictly complied with. After the raid, the copy of information in writing was not sent to the immediate official superior within 24 hours. He would rely on the case of ***Karnail Singh Versus State of Haryana, (2009) 8 SCC 539***, and for want of the statutory compliance, the applicant deserves bail.

4. The learned A.P.P. would submit that the entries were taken in station dairy and the immediate official superior was intimated on phone and on telephonic sanction, the raid was conducted. However, there was no material with the cahrgesheet indicating the compliance under Section 42(2) of the NDPS Act.

5. Hon'ble Supreme Court, in a case of ***Karnail Singh*** (*supra*), held that compliance with Section 42 of the NDPS Act is mandatory. Though the intimation was received during the course of regular patrolling, the compliance required under Sections 42(1) and 42(2) of the NDPS Act was not done with a satisfactory

explanation about the delay. In the said case, Hon'ble Supreme Court, referring to its earlier judgments in the cases of ***Abdul Rashid (2000) 2 SCC 513 and Sajan Abraham [(2001) 6 SCC 692]*** has observed, in clause (d) of paragraph 35 that "while total non-compliance with requirements of sub-Sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. Reading Section 42 (2) of the NDPS Act, the compliance of the said sub-section is mandatory.

6. There is nothing on record that sub-sections (1) and (2) of Section 42 of the NDPS Act were complied even belatedly with satisfactory explanation. The strict compliance of the Section 42 of the NDPS Act has not been complied with in the case at hand. There are no antecedents to the discredit of the applicant. He has a defence that he took the lift to go to his place and unaware that the car was transporting the contraband.

7. As far as Section 37 of the NDPS Act is concerned, the Hon'ble Supreme Court, in the case of ***Union Of India vs Shri***

Shiv Shanker Kesari, (2007) 7 SCC 798, has held that the Court while considering the application for bail with reference to Section 37 of the NDPS Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail. That the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

8. Considering the above proposition, it is necessary to look into the nature of accusation and the evidence that have been collected during the course of investigation alongwith the circumstances of the case. The Court has to examine whether the suspicious of the prosecution about non-involvement of the accused is *prima facie* true or correct.

9. Here in the case as discussed above, the contraband were seized from the dicky of the car and around three persons were traveling therein. The non-compliance of Section 42(1) and 42(2) of the NDPS Act is relevant to consider the bar under Section 37 of the NDPS Act.

10. After having gone through the chargesheet, the Court is of the view that non-compliance of the mandatory provision of law is

sufficient circumstance to consider the bail application. Hence, the order:-

- i) The bail application is allowed.
- ii) Applicant Ravindra Amarsing Rathod be released on bail, on furnishing PB and SB of Rs.1,00,000/- with two solvent sureties of the amount of Rs.50,000/- each, in C.R.No.46 of 2023 registered with Aundha (Nagnath) Police Station, District Hingoli, for the offences punishable under Sections 8(c), 20(b), 29(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985, on the conditions that,
 - (a) He shall attend the trial on each and every effective date
 - (b) He shall not tamper with the prosecution witnesses.
- (iii) Needless to state that these observations are limited to the bail purpose only.

**(S. G. MEHARE)
JUDGE**

rrd