

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

937 BAIL APPLICATION NO.2182 OF 2022

**SURESH RAOSAHEB SAGARE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Advocate for Applicant : Mr. Swapnil Joshi, Mr. Mahesh D. Swami i/b
J.P. Legal Associates
APP for Respondents: Mr. S. P. Deshmukh

....

**CORAM : S.G. MEHARE, J.
DATE : JANUARY 24,2023**

PER COURT :

1. Heard learned counsel for the applicant and learned APP for the respondent-State.
2. The learned counsel for the applicant would argue that the applicant was the *Badali* driver. The alleged contraband was recovered from the dickey of the vehicle. He was unaware of the Ganja carried in the vehicle. Therefore, it cannot be said that he was in conscious possession of the narcotic drug. That apart, the police officer did not comply with Sections 42 and 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “ NDPS Act”). Hence, the alleged raid and recovery falls under the shadow of doubt. Nothing is to be recovered and discovered from the applicant.

3. The learned A.P.P. would submit that since the contraband was recovered from the dicky of the vehicle Section 50 of the NDPS Act would not apply. The quantity is commercial. The offence is serious. He may not be granted bail.

4. The Honourable Apex Court, in the case of *Karnail Singh Vs. State of Haryana, (2009) 8 SCC 539* (the Constitution Bench) observed in paragraph 35 sub clause (b) about the compliance of the Section 42 of N.D.PS Act in the following words :-

“ (b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it was not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior”

5. In the present case, the investigating officer was having the information about the different person; hence he laid a trap, however, suddenly he found a car in which the applicant was sitting on driver seat. The *ganja* was found. So, immediately the investigating officer has taken action. In such a situation, the compliance of Section 42(1) of the NDPS Act is not exempted. The compliance of Section 42 of the NDPS Act is mandatory in any event. If there are such circumstances, the information should be given to the officer superior with a reasons of emerging situation about not recording the information in writing and sending copy thereof to the officer superior within a reasonable period. However, the record does not reveal that the mandatory provision of Section 42(1) of the N.D.P.S. Act has been complied with. For non compliance of such mandatory requirement, the Courts are taking view raising the suspicious over the raid. For non compliance of Section 42(1) of the N.D.P S Act, the doubt may be raised about the raid allegedly conducted suddenly. On this sole ground, the applicant deserves bail. Hence the following order :-

ORDER

- (i) The Bail Application is allowed.
- (ii) The applicant Suresh Raosaheb Sagare, be released on bail on executing P.B. and S.B. of Rs. 50,000/- (Rupees fifty thousand) with

one solvent surety in the like amount in Crime No. 148/2022 registered at Begumpura, Police Station, Aurangabad which is registered as Special Case (NDPS) 335/2022 before the learned Sessions Judge- Aurangabad under Sections 20(B)(ii) 29 and 8 (C) of NDPS Act, 1985 on the conditions that :-

- (a) The applicant shall attend the trial on each effective date of hearing.
- (b) The applicant shall refrain himself from involving in the similar crime.

(S. G. MEHARE)
JUDGE

ysk