

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.579 OF 2023

(Shri Dilip Chandrapal Yadav Vs. The State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A. Jaltare, Advocate for the applicant a/w Shri D.R. Galande, Advocate for the
applicant.
Shri I.J. Damle, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- AUGUST 08, 2023.

Heard.

2. Present application is for grant of bail filed under Section 439 of the Code of Criminal Procedure in connection with Crime No.283 of 2023 registered at police station Ram Nagar, Chandrapur for the offence punishable under Sections 8(c), 20(b)(ii) read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short).

3. The applicant is arrested on 17th March, 2023. The accusation against the present applicant is on the basis of report lodged by the police officer that on 16th March, 2023 he received secret information that one person namely Kawadu Uke is in possession of contraband article Ganja in his house. Accordingly, the informant along with the raiding party members visited the house of Kawadu Uke. During the search of the house, one bag of green colour material was found in his house. He was present along with one other person. On the basis of said report, police have registered the crime against the

present applicant. During the raid, the contraband article weighing 3.209 kilograms worth of Rs.31,590/- is seized.

4. As per the contention of the present applicant, the quantity of Ganja which was found is not of a commercial quantity. The Investigating Officer and the informant has not followed the mandatory provisions under Section 50 and 52A of the NDPS Act. The present applicant is implicated merely on the basis of confessional statement of co-accused which is not admissible. Now, investigation is completed and charge-sheet is filed. So, further custody of the present applicant is not required and hence he be released on bail.

5. Said application is strongly opposed by the State on the ground that the present applicant as well as co-accused found in possession of the contraband articles. As per the disclosure statement made by the co-accused this contraband articles was handed over by the present applicant to the co-accused. So *prima facie* material is against the present applicant to connect him with the alleged offence and hence application deserves to be rejected.

6. Heard learned Counsel for the applicant. He reiterated the contention and submitted that the applicant was not found in possession of the said contraband articles. The contraband articles is recovered from the house of the co-accused. Except the statement of the co-accused which is in the form of the disclosure, no other material is against the present applicant to connect him

with the alleged offence. He further submitted that before arrest of the present applicant, no notice was given regarding the search to the present applicant in presence of the Gazetted Officer. In fact, nothing is seized from the present applicant. The samples are not obtained in view of Section 52A of the NDPS Act thus, there is no compliance.

7. He further submitted that in view of the judgement of the Hon'ble Apex Court in case of ***Tofan Singh Vs. State of Tamilnadu [(2013) 16 SCC 31]*** the confession statement of the co-accused is not admissible against the present applicant. In view of that order no case is made out against the present applicant and hence, he be released on bail.

8. Learned Additional Public Prosecutor reiterated the contention and submitted that though quantity is not commercial quantity however, it is the present applicant who has supplied the said contraband articles to the co-accused, and therefore, *prima facie* case is made out against the present applicant and hence bail application deserves to be rejected.

9. I have heard both the sides and perused the investigation papers. The recitals of the First Information Report shows that on the basis of secret information received by the informant, the raid was conducted. At the relevant time co-accused was present in the house. They have given the call after reaching in front of the house and co-accused came out of the house. The search was carried out of the said house and it revealed that the co-accused

was in possession of the contraband articles Ganja weighing 3.209 kilograms. The said contraband articles are seized from the possession of the co-accused. On enquiry with the co-accused, he disclosed that the present applicant has kept the said contraband articles in his house on that morning itself. On the basis of said disclosure statement, the present applicant is arrested. During investigation, the statements of the various witnesses, seizure panchanama and the inventory panchnama was drawn. From the investigation papers it reveals that no notice regarding any search was given to present applicant. It further reveals that the samples are obtained during the seizure panchnama. Thus, there is no compliance in view of Section 52A of the NDPS Act.

10. Recently, in ***Criminal Appeal No.1443/2023 (Simranjeet Singh Vs. State of Punjab)***, the Hon'ble Apex Court has dealt with this issue by referring the judgement of ***Union of India Vs. Mohanlal and anr. [(2016) 3 SCC 379]*** held that the prosecution is initiated as work of drawing sample was not by taking recourse to sub-section (2) of Section 52A of the NDPS Act. In the present case also there is no compliance in view of Section 52A of the NDPS Act. Moreover, in view of the decision of the Hon'ble Apex Court in the case of ***Tofan Singh (supra)*** the disclosure statement and confessional statement of the co-accused is not admissible against the present applicant. Considering the same, present application deserves to be allowed by imposing certain conditions. Accordingly, I

proceed to pass following order :

- (i) The application is allowed.
- (ii) The applicant - Shri Dilip Chandrapal Yadav in Crime No.283 of 2023 registered at police station Ram Nagar, Chandrapur for the offence punishable under Sections 8(c), 20(b)(ii) read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, be released on bail on executing P.R. Bond in the sum of 25,000/- (Rs. Twenty five thousand) with one surety in the like amount.
- (iii) The applicant shall not involve in any other similar nature of crime.
- (iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.
- (v) The applicant shall attend the trial Court on regular basis.
- (vi) The applicant shall furnish his Cell-phone number and address along with the address proof before the Investigating Officer.

11. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)