

punishable under Sections 8(c), 20(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. In these matters, it is argued that there is a variance in weight of the contraband at the time of seizure and while making inventory before the learned Magistrate. It is pointed out that the weight of the contraband was increased when it was weighed before the Magistrate. Furthermore, it is pointed out that there is non-compliance of Section 52 A of the NDPS, Act as no sample was drawn before the Magistrate.

4. In reply, the learned APP pointed out that since the contraband was weighed with the Gani bag there is a possibility of difference in weight at the time of making inventory.

5. Furthermore, it is argued by the learned APP that the 4 samples were drawn by the empowered officer from the contraband seized from accused no. 1 and 8 samples from accused no. 2. It is pointed out that the said sealed packets and samples were opened and were packed again after the learned Magistrate certified it. Thus, according to the learned APP, there is no discrepancies in following the procedure.

6. Having gone through the charge-sheet and the material collected by the IO, during the investigation, it is evident that there is a difference in weight at the time of seizure and at the time of preparing inventory.

7. As far as contraband recovered from the accused no. 1, it shows that, at the time of seizure, the weight was 20 kg and 812 grams

and at the time of preparing inventory, the weight was 20 kg. and 950 gms.

8. As far as contraband recovered from the accused no. 2, it shows that, at the time of seizure, the weight was 40 kgs and 308 grams and at the time of preparing inventory, the weight was 40 kg. and 590 gms. Thus, there is a difference in weight.

9. The justification given by the learned APP cannot be accepted, considering the procedure required to be followed before the Magistrate while weighing the contraband.

10. Furthermore, there is no such procedure to certify the samples prepared by the IO, during the search and seizure of the contraband. As per the well settled law in this regard the samples has to be drawn before the Magistrate.

11. Thus, submission of the learned APP cannot be accepted that the Magistrate certified the samples drawn by the IO during the seizure.

12. In the circumstances, prima facie there is non-compliance of section 52 A of the NDPS, Act.

13. As far as antecedents are concerned, there are no antecedents against the applicants.

14. Thus, in view of the above observations, I am of the opinion that the applicants are entitled for grant of bail.

ORDER

- i) Criminal applications are allowed;
- ii) It is directed that the applicants shall be released on bail in Crime No.267 of 2022, registered with Adgaon Police Station, Nashik, for the offences punishable under Sections 8(c), 20(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on furnishing P.R.Bond of Rupees Twenty-Five Thousand (each) with one solvent surety in the like amount;
- iii) The applicants shall attend the concerned Police Station on 1st day of every month between 10.00a.m. to 11.00 a.m., till the conclusion of the trial except on the date of trial;
- iv) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;
- v) Liberty is granted to the State to apply for cancellation of bail in case of any breach of condition or misuse of liberty by the applicants.
- vi) The applicants shall attend the trial before the trial Court regularly on every date unless exemption is granted by the trial Court.

15. The applications are disposed of .

(ANIL S. KILOR, J)