



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

CRIMINAL APPLICATION (BA) NO.481/2024

Gopal s/o Dagdu Mundale

..VS..

**The State of Maharashtra, through PSO PS State Excise, Flying Squad,
Buldhana, Tahsil and District Buldhana**

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri N.B.Kalwaghe, Counsel for the Applicant.
Shri C.A.Lokhande, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 13/08/2024

PRONOUNCED ON : 20/08/2024

1. The applicant arrested on 20.12.2023 seeks regular bail in connection with Crime No.350/2023 registered with the non-applicant/ police station for offences punishable under Section 20(a), 20(b)(i)(ii), and 20(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act).

2. Informant, serving with the State Excise Department, received a secret information that the applicant had cultivated "Opium" in his agricultural field. The informant and other raiding party members conducted a raid along with Talathi and Panchas. On conducting the raid, "Opium", dry as well as wet plants were

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found. The said plants were uprooted and seized weighting 32.40 kilograms. At the time of the raid, the applicant was also found and he was arrested.

3. Heard learned counsel Shri N.B.Kalwaghe for the applicant and learned Additional Public Prosecutor Shri C.A.Lokhande for the State.

4. Learned counsel for the applicant submitted that there is total non-compliance of Section 42 of the NDPS Act. The information received ought to have been reduced into writing as required by Section 42(1) of the NDPS Act, which has not been done and, therefore, the prosecution case is doubtful. He further submitted that wet and dry "Ganja Plants" were not segregated. The leaves and stems were also not segregated and the same were collectively weighed. The procedure followed by the investigating officer is contrary to provisions of the NDPS Act. As such, he prays that the application be allowed and the applicant be released on bail.

5. In support of his contentions, learned counsel for the applicant placed reliance on following decisions:

1. Dnyaneshwar Jagan Rajale (Dhangar) vs. State of Maharashtra, reported in 2021 SCC OnLine Bom 5013;

2. Sholadoye Samuel Joy vs. State of Maharashtra, reported in 2022 SCC OnLine Bom 142,

3. Dattu Shankar Shinde vs. State of Maharashtra and anr, reported in 2022 SCC OnLine Bom 8862.

6. Learned Additional Public Prosecutor for the State strongly opposed the application and submitted that letter addressed by the informant to the Superintendent of State Excise Department sufficiently shows that there is compliance of Section 42 of the NDPS Act.

7. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on following decisions:

1. Mukesh Rajaram Chaudhary vs. The State of Maharashtra, reported in 2023 SCC OnLine Bom 2096, and

2. Karnail Singh vs. State of Haryana, reported in (2009)8 SCC 539.

8. Section 42 of the NDPS Act requires officer who receives information to reduce it into writing. In terms of Section

42(2) of the NDPS Act, information taken down in writing has to be sent to official superior of the said officer.

9. In the case at hand, admittedly, the information received by the informant was not reduced into writing.

10. The Honourable Apex Court in the case of **Karnail Singh** *supra*, has held as under:

“In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirements of Section 42(1) and 42(2) nor did Sajjan Abraham hold that the requirements of 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows :

(a) The officer on receiving the information (of the nature referred to in Sub-section (1) of section 42) from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of 42(1).

(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 would 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 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance of requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of 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 a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001.”

11. From the decision of the **Karnail Singh** *supra*, it is clear that total non-compliance is not, but delayed compliance is permissible. The Honourable Apex Court held that compliance with the requirements of Section 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But, in special circumstances involving

emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.

12. In the present case, it is not in dispute that there is total non-compliance of Section 42(1) of the NDPS Act. The officer who received the information has not received it into writing at all. When an information is not received into writing, question of sending the same does not arise. The informant has also informed the Superintendent that he has conducted raid and contraband article was found and the same has been seized. This is not the compliance contemplated by provisions of Section 42(1) of the NDPS Act. The punishment provided for offences under the NDPS Act are stringent and, therefore, compliance of provisions of the NDPS Act is to be adhered strictly.

13. In this view of the matter, the applicant has made out a case for grant of bail and, therefore, following order is passed:

ORDER

(1) The criminal application is **allowed**.

(2) In connection with Crime No.350/2023 registered with the non-applicant/ police station for offences punishable under Section 20(a), 20(b)(i)(ii), and 20(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, the applicant be released on bail on his executing a PR.Bond in the sum of Rs.50,000/- with one solvent surety of the like amount.

(3) The applicant shall not directly or indirectly make any inducement and threat or promise to any persons acquainted with facts of the present case.

(4) The applicant shall attend each and every date of trial before the Sessions Court without seeking any exemption, unless there are exceptional circumstances.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!