



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2562 OF 2024

Sandip s/o Ashok Bhambarkar
Age: 36 years, Occu.: Business
and Social Work,
R/o. House No.4462, Tange Galli,
Nalegaon, Ahmednagar,
Tq. And Dist. Ahmednagar.

.. Applicant

Versus

1. The State of Maharashtra
Through its Investigating Officer,
Gangapur Police Station,
Tq. Gangapur, District Aurangabad.
2. Satyajit s/o Sudhakar Taitwale
Age: 42 years, Occu.: Service,
Police Inspector, Gangapur Police
Station, Tq. Gangapur,
District Aurangabad.

.. Respondents

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Mr. N. B. Narwade, Advocate for the applicant.
Mr. S. A. Gaikwad, APP for respondent Nos.1 and 2/State.

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**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

**RESERVED ON : 02 JULY 2025
PRONOUNCED ON : 01 AUGUST 2025**

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present application has been filed under Section 482 of the Code of Criminal Procedure for quashing the proceedings in Special Case No.425 of 2024, pending before the learned Special Judge, under the NDPS Act, Vaijapur, District Aurangabad arising out of the FIR vide

Crime No.96 of 2024 dated 29.02.2024 registered with Gangapur Police Station for the offence punishable under Section 20-B of the Narchotic Drugs and Psychotropic Substance Act, 1985 (hereinafter referred to as the "NDPS Act").

2. Heard learned Advocate Mr. N. B. Narwade for the applicant and learned APP Mr. S. A. Gaikwad for respondent Nos.1 and 2/State.

3. Learned Advocate appearing for the applicant has taken us through the entire charge-sheet including the FIR and submits that the FIR has been lodged by Police Inspector, Gangapur Police Station, District Chhatrapati Sambhajinagar, who states that on the basis of secret information, patrolling was done. In two private vehicles, which were intercepted and searched, nothing was found, however, one person was found coming on Suzuki Access 125 moped bearing MH-16-AS-87 and a gunny bag was tied on the back seat. He was intercepted. His name and address was asked. He told his name as Rahul Rajesh Jadhav and after informing him that the informant as well as Naib Tahsildar are the gazetted officers and it is necessary for them to take search under NDPS Act, they offered their own personal search. The said person refused to take search of the raiding party and allowed them to inspect the gunny bag. In the said gunny bag, the police found 5 packets wrapped in *Khakee* colour tape. In that plastic bag, they found

Ganja like pieces of tree. It contained dried leaves, flowers and seeds. The entire material was then seized and upon inquiry, he made the statement that the said *Ganja* has been brought from Sandipsheth Bhambarkar i.e. present applicant.

4. Statements of all the witnesses are on the same line. The present applicant came to be arrested, however, nothing has been seized from his place. Therefore, except the statement of the said accused, which amounts to confession, there is nothing. The present applicant has been intentionally implicated, as he had made application against the sitting MLA Mr. Sangram Arun Jagtap with the District Superintendent of Police on 02.09.2021. In that complaint application the applicant had stated that in the elections for Maharashtra Legislative Assembly, 2019, said MLA Sangram Jagtap had filed application, but at the time of campaigning, he gave false promises to the youths that he would increase the employment opportunities. Such complaint was also made by him to the District Superintendent of Police, Chief Election Commissioner, Mumbai and also to the Registrar of this Court. The implication of the applicant is obvious and, therefore, when there is no evidence against him, it would be an abuse of process of law.

5. Per contra, learned APP strongly opposed the application and submitted that though the complaint application appears to have been

given by the applicant to various authorities on 02.09.2021, yet the FIR in question has been lodged on 29.02.2024 i.e. after about two and half years. The CA report shows that *Ganja* has been detected in the flowering tops with brownish leaves, seeds and stalks in all the six packets. *Ganja* is the narcotic substance. Now, in presence of the gazetted officers, the statement was made that the accused, who was found possessing the same, had procured it from the present applicant and, therefore, let there be trial, as the entire charge-sheet is before the concerned Special Court.

6. As the facts of the case are already revealed, we do not want to reproduce the same. The fact that remains is that as per the FIR, in all, five packets were seized and below that also there was *Ganja* like substance in the gunny bags. So, it appears that six packets of samples were prepared for the purpose of analysis. The inventory has also been taken and now, the CA report says that the substance that was found is *Ganja*, which is narcotic substance. However, that was found from co-accused Rahul Rajesh Jahdav. Upon inquiry by the investigating officer/informant in presence of Naib Tahsildar and the entire police machinery, he had stated that he brought the *Ganja* from the present applicant. That means, the alleged confessional statement/information by Rahul Rajesh Jadhav is in presence of the police officer, which is inadmissible under Section 25 of the Indian Evidence Act. We would like

to rely on the observations from **Karan Talwar vs. The State of Tamil Nadu, [2025 AIR SC 225]**. Of course, in the said case, the challenge was to the rejection of discharge application under Section 227 of the Code of Criminal Procedure. However, the consideration that is required to be seen in respect of involvement of a person or whether against an accused there is any evidence which would require further consideration, *prima facie* case is there or not, would be same. In this case reliance has been placed on the decision in **Suresh Budharmal Kalani [Suresh Budharmal Kalani v. State of Maharashtra, [(1998) 7 SCC 337]**, wherein it was stated that a co-accused's confession containing incriminating matter against a person would not by itself suffice to frame charge against him. Further, reliance was also placed on the decision in **Ram Singh v. Central Bureau of Narcotics, [(2011) 11 SCC 347]**, wherein the Hon'ble Supreme Court held that Section 25 of the Indian Evidence Act would make confessional statement of accused before police inadmissible in evidence and it could not be brought on record by prosecution to obtain conviction. Therefore, in this matter, except the said confessional statement that too incriminating co-accused, there is nothing. That step under the interrogation would have been considered by the investigating officer and when there was raid on the present applicant, nothing was found. Then in that case, it would be an abuse of process of law, if the present applicant is asked to face the trial. This is

a fit case where we should exercise our inherent powers under Section 482 of the Code of Criminal Procedure. Hence, the following order :-

ORDER

- I) Criminal Application stands allowed.
- II) The proceedings in Special Case No.425 of 2024, pending before the learned Special Judge, under the NDPS Act, Vaijapur, District Aurangabad arising out of the FIR vide Crime No.96 of 2024 dated 29.02.2024 registered with Gangapur Police Station, District Aurangabad for the offence punishable under Section 20-B of the NDPS Act, stands quashed and set aside as against the present applicant – **Sandip s/o Ashok Bhambarkar**.

[**SANJAY A. DESHMUKH**]
JUDGE

[**SMT. VIBHA KANKANWADI**]
JUDGE

scm