



Jose

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO.49 OF 2025

SHRI ANDREY DEMIN @
ALEXIS PETER, PRESENTLY
IN JUDICIAL CUSTODY AT
COLVALE JAIL

... Petitioner.

Versus

Union of India

... Respondent.

Mr. Rohan Desai with Ms. Arya Parrikar, Advocates for the
Petitioner.

Mr. Pravin Faldessai, Deputy Solicitor General of India for the
Respondent.

CORAM: VALMIKI MENEZES, J.

DATED: 13th October, 2025

P.C:

1. Registry to waive office objections and register the matter.
2. This revision application takes exception to an order of 25.09.2025 of the Court of the Additional Sessions Judge, Mapusa passed in Special Criminal Case No. NDPS 66/2023 whereby it has framed an additional charge against Accused No.2 under Section 20(a) of the NDPS Act.
3. Charge-sheet came to be filed against four Accused before the

Sessions Court by the Narcotics Control Bureau. The charge-sheet was filed alleging offences under Sections 8(c), 20(a), 20(b)(ii)(A), 22(c), 27A and 29 of the NDPS Act.

4. In the original order framing charge which is dated 05.05.2025, the Court framed a charge only under Section 20(b)(ii)(A), 22(c), 27A and 29 of the NDPS Act. Though the charge was framed, the charge has yet not been explained to the Accused and their plea recorded. Note must also be taken of the fact that Accused No.2 has been discharged.

5. The record reveals that the Public Prosecutor moved an application which was marked Exhibit D-55 on 31.07.2025, before charge was explained to the Accused pointing to the Court that though it was argued and a not was made by the Session Court in its order framing charge dated 05.05.2025 that a case had been made out for framing charge under Section 20(a) of the NDPS Act against Accused No.2 for cultivating Ganja at his residence, the Court had omitted to frame this charge.

6. It is the submission of the learned Counsel for the Revision Petitioner that the impugned order has been passed granting the application at Exhibit D-55 and framing additional charge under Section 20(a) of the Act when such an application was neither maintainable nor could such an application seeking reframing or seeking an additional charge to be framed be filed either through the

State or by the Accused, and such powers under Section 216 of the Cr.P.C. are to be exercised by a Criminal Court on its own and never at the behest of any of the parties to the proceedings. Reliance is placed on the following Judgments:

- a) ***R. Kartikalakshmi v. Sri. Ganesh, (2017) 3 SCC 347.***
- b) ***Deepak Jeevach Mandal v. State of Maharashtra, Criminal Writ Petition No.4875 of 2019, Bombay High Court decided on 13.11.2019.***
- c) ***Sambhaji Narsingh Mali and Anr. v. State of Maharashtra, Writ Petition No. 3841 of 2018 Bombay High Court decided on 06.12.2019.***
- d) ***Swarupa Anil Lodha v. State of Maharashtra and Anr., Criminal Writ Petition No. 5868 of 2019 Bombay High Court decided on 28.11.2019.***
- e) ***Nirmal Ramesh Oswal v. State of Maharashtra, Criminal Writ Petition No. 5201 of 2019 Bombay High Court decided on 25.11.2019.***

7. Learned Public Prosecutor has opposed the submissions submitting that while it is true that the Sessions Court committed a mistake in not including a charge under Section 20(a) in its first order of 05.05.2025, though there are specific findings therein at paragraph 33 as to the ingredients of the said provision of accusation against

Accused No.2 of cultivating Ganja, the Court has observed in the impugned order at paragraph 5 thereof after referring to the Judgment of the Supreme Court in *P. Kartikalakshmi* (supra) that it has the power to, on its own, under Section 216 of the Cr.P.C. to frame additional charge. It has further been submitted that the Court has in fact considered the material on its merits and reiterated in paragraphs 6 and 7 of the impugned order that there is material to frame charge under Section 20(a) of the NDPS Act and has by the impugned order so framed the additional charge. The learned Public Prosecutor submits that there is no cause for interference with the impugned order.

8. There is no doubt that a Criminal Court, is vested with powers under Section 216 Cr.P.C. to alter a charge or frame an additional charge at any stage of the proceedings, which may also be at the end of the trial, as long as it is before passing Judgment. This power, no doubt has to be exercised by the Court suo motu and on its own. In all the Judgments cited before me, the power was exercised by the Magistrate or by the Sessions Court on an application filed by a party, and the Courts have consistently held that such an application is not maintainable, since it is not a vested right of any of the parties to the proceedings i.e. either the State or the Accused to move such an application to the Court. The application at Exhibit D-55 was, therefore, clearly not maintainable.

9. However, if one looks at the specific facts of this case, a perusal of paragraph 33 of the first order passed framing charge i.e. order of 05.05.2025, the Court has specifically concluded on the basis of material before it at paragraph 33 thereof, that there was material against Accused No.2 to frame a charge under Section 20(a) of the NDPS Act, but however, has in the operative part of the order failed to include Section 20(a) and frame charge thereof. In the same order, after considering the material, the Court has refused to frame charge against Accused No.4 and has specifically discharged that Accused. In that order, it has proceeded to frame charge under Section 8(c), 20(a), 20(b)(ii)(A), 22(c), 27A and 29 of the NDPS Act.

10. Even assuming that the application at Exhibit D-55 was not maintainable [and it is actually not maintainable in terms of what is held in *P. Kartikalakshmi* (supra)], when brought to the notice of the Court, the Sessions Court has taken note of the mandate in *P. Kartikalakshmi* (supra) of this Judgment and noted that the Prosecution has no power to file such an application. The Sessions Court has then proceeded to consider the specific material that is filed along with the charge-sheet in paragraphs 6 and 7 of its order, making detailed reference to the photographs contained in the laptop of the Accused No.2 attached during investigation, which show some images of Ganja cultivation, and after making further reference to photographs taken in the kitchen of the house allegedly in possession of Accused No.2, has specifically concluded that there was material

to frame a charge against Accused No.2 of having cultivated Ganja. Consequently, on these findings, the Court has proceeded to frame an additional charge under Section 20(a) of the NDPS Act.

11. As reiterated earlier, the application at Exhibit D-55 was obviously not maintainable, but the Court having come to conclusions, independent of the application at Exhibit D-55, after considering the material on record, has stated in paragraphs 6 and 7 of its order, has now directed to frame a charge under Section 20(a) against Accused No.2. No infirmity can be found with the findings recorded in paragraphs 6 and 7 which state that there is material to frame such charge. Consequently, though the application at Exhibit D-55 was not maintainable, the Court has correctly concluded at paragraphs 6 and 7, based upon the material on record that there was such material to frame a charge under Section 20(a) of the Act. This is in line with the earlier finding of the Court in paragraph 33 of its order of 05.05.2025 where it so records the same finding.

12. For all these reasons, there is no case made out for interference in revisional jurisdiction of this matter with the impugned order.

13. The Revision Application is, therefore, rejected.

VALMIKI MENEZES, J.