



Judgment

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APL] No. 983 OF 2024.

Ratan @ Goldi @ Randheer Pal Singh
Bhatia, son of Gurudayal Singh,
Aged 49 years, resident of Ward no.4,
Deori, District Gondia (Maharashtra),
At present residing at House No.16,
Basantpur Road, Green City,
Rajnandgaon (Chhatisgarh). ... **APPLICANT.**

VERSUS

1.The State of Maharashtra,
through Police Station Kapil Nagar,
Nagpur (Maharashtra). ... **NON-APPLICANT.**

Mr. Surender Singh, Senior Advocate with Mr. C.B. Barve,
Advocate for the Applicant.
Ms S.Z. Haider, A.P.P. for the Non-applicant.

CORAM : ANIL L. PANSARE AND
M. M. NERLIKAR, JJ

DATE : AUGUST 04, 2025.

Rgd.

ORAL JUDGMENT (Per Anil L. Pansare, J.) :

Heard. Issue Rule, returnable forthwith. Ms S.Z. Haider, learned A.P.P. waives service for the Non-applicant. With consent of the learned Counsel for the parties, the application is taken up for final hearing.

2. The applicant is before the Court seeking to quash the charge sheet filed against him being Final Report No.70/2023 for the offence punishable under Sections 8[c], 15[A] and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. We have heard the Mr.Surender Singh, learned Senior Counsel for the applicant and Ms S. Haider, learned A.P.P. for the non-applicant.

The learned Senior Counsel submits that out of total four accused, two accused were put to trial, and the trial Court was pleased to acquit them by assigning following amongst other reasons.

“65. *In view of the above discussion*

and the evidence on record the prosecution case cannot be said as proved beyond reasonable doubt for the reasons as :

- *That, the contraband which have been allegedly seized at the spot where sent for analysis and there is glaring ambiguity in quantity of weight as mentioned in C.A. form and the FSL report is much more.*
- *Further, as apparently and admittedly the samples were taken at the time of inventory before the Magistrate were sent for FSL.*
- *Even, after receiving the C.A. report and found there is ambiguity the samplers which were taken at the time of inventory could have been sent for FSL but not steps taken to that effect. This is the serious laps in investigation.*
- *It is further appeared that the other co-accused are concerned their names and the addresses were known by way of memorandum of statement by both the accused, but except the single visit no any attempt was made to arrest or interrogate those absconding accused.*
- *It is also apparent that the CDR were never called as to establish the contact and any monetary transport with the accused inter se or with either of those absconding accused.*
- *The independent witnesses as panch have not supported the prosecution case.*
- *There is no proper explanation regarding*

the seizure and disposal of the other commodity i.e. onion bags which were in the vehicle of the accused No.1 Bablu.

66.

Final Conclusion :

67. Considering the above discussion and the ratio laid down in the above cases as a precedent and plain reading of Section 52-A of the NDPS Act the prosecution had not proved that evidence is cogent, clear regarding the transporting or possession of the contraband and beyond reasonable doubt and therefore, benefit of doubt given to the accused No.1 and 2.

68. Hence, this Court is of opinion that though the prosecution has proved the raid but failed to prove as the alleged contraband contained the Ganja beyond reasonable doubt. Therefore, the benefit of doubt has to be given to the accused. Consequently, finding on the point nos.1, 2, 3, 4 and 5 as "Negative".

4. The argument is that the applicant will be put to trial on the basis of the drugs which were allegedly seized with the lapses noted above by the learned trial Court.

5. What is apparent from the conclusion noted by the trial

Court is, that the quantity of seizure differs from the quantity sent to the Forensic Science Laboratory. Another glaring discrepancy is that the samples were taken at the time of inventory before the Magistrate, when infact the samples should have been taken at the time of seizure. The third lapse is, after receiving the Chemical Analyzer's report, when it is found that there is ambiguity, the investigating agency could have sent the samples that were taken at the time of inventory for the purpose of examination to the Forensic Science Laboratory, but, has been not done so. The fourth and important lacunae is that, the independent witness did not support the prosecution case.

6. That being so, if the applicant is put to trial on the basis of above seizure, the prosecution will be a mere formality, because the result is sealed. In other words, no useful purpose would be served by putting the applicant to trial, rather it would amount to abuse of the process of law.

7. At this stage, the learned A.P.P. submits that the benefit may not be extended to the applicant, since he has managed to

conceal himself and was not available for interrogation. She submits that charge sheet has been filed against the present applicant showing him to be absconding.

8. We do not appreciate this argument, firstly because the trial Court itself has recorded a finding that though the co-accused has disclosed name of the applicant during interrogation, the investigating agency did not make any attempt to arrest him, and that except for a single visit, no further attempt was made. That apart, we do not find, as it is not disclosed to us, as to what steps were taken by the investigating officer to arrest the applicant. The recourse to the provisions under Section 82 and 83 of the Code was something that could have given effective results.

9. Be that as it may, the fact remains that the investigating agency failed to arrest the applicant. None the less, charge sheet has been filed against him, and he will be put to trial on the basis of seized drugs which the trial Court has found to be full of lapses. We are informed that the judgment of the trial Court has attained finality. Thus, the prosecution has accepted the lapses in the seizure

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process. These lapses can not be now cured, even if the applicant is put to trial. Therefore, and as stated earlier, if the applicant is put to trial, it will be a futile exercise and would achieve no useful purpose. We are therefore of the considered view that the case in hand is a fit case where extra ordinary jurisdiction under Section 482 of the Criminal Procedure Code can be invoked. Accordingly, we allow the application in terms of prayer clause [i], which reads as under :

“[i] It is therefore, prayed that this Hon’ble Court may kindly quash the Final Report No.70 of 2023 of Police Station Kapil Nagar, Nagpur offence p/u Section 8[c], 15[A], 29 of the Narcotic Drugs and Psychotropic Substances Act, and all subsequent proceedings in the Court of Special Judge, Nagpur in Special Case No.592/2023.”

10. Rule is made absolute in aforesaid terms and Criminal Application is disposed of accordingly.

JUDGE**JUDGE**