

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.4428 OF 2022

Between:

Baba Sow Chandekar & another ... Petitioners

And

The State of Telangana,
rep. by its Public Prosecutor,
High Court for the State of Telangana,
Hyderabad. ... Respondent.

DATE OF JUDGMENT PRONOUNCED: 05.07.2022

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.P. No.4428 of 20022

% Dated 05.07.2022

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High Court for the State of Telangana,
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! **Counsel for the Petitioners:** Duvvuri Surya Narayana

^ **Counsel for the Respondent:** Public Prosecutor

>HEAD NOTE:

? **Cases referred**

1 Criminal Appeal No.652 of 2012

2 (2008) 16 Supreme Court Cases 417

³ 2005 STPL(LE) 34710 SC

HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.4428 of 2022****ORDER:**

1. The petitioners, who are A1, A2, A4 and A8 were arrested by the Sub-Inspector of Nandigam Police Station on 17.01.2022 while the petitioners along with 8 others, were transporting 214 kgs of Ganja in 107 packets. The police seized one Honda car and 55 packets of Ganja each weighing 2 kgs from the 1st petitioner/A1 and one Maruthi car and 40 packets of Ganja each weighing 2 kgs from A2. It is further the case that one packet of ganja was drawn as sample out of the seized contraband from 3 vehicles of which, two vehicles were seized from the possession of these petitioners.

2. The main ground urged by the counsel for the petitioners are that i) there is non compliance of Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') as there is no mention of any intimation being given to the superior officer within 72 hours as required; ii) neither remand report nor the complaint indicate about the sampling done in accordance with the Standing Order 1 of 1989 dated 13.06.1989.

2. Learned counsel for the petitioners also relied upon the judgment of Hon'ble Supreme Court in the case of **Union of India v. Mohanlal** in Criminal Appeal No.652 of 2012, specifically to para 20 of the judgment, which reads as follows

“20. (1) No sooner the seizure of any Narcotic Drugs and Psychotropic and controlled Substances and Conveyances is effected, the same shall be forwarded to the officer in-charge of the nearest police station or to the officer empowered under [Section 53](#) of the Act. The officer concerned shall then approach the Magistrate with an application under [Section 52A\(ii\)](#) of the Act, which shall be allowed by the Magistrate as soon as may be required under Sub- Section 3 of Section 52A, as discussed by us in the body of this judgment under the heading ‘seizure and sampling’. The sampling shall be done under the supervision of the magistrate as discussed in paras 13 and 14 of this order.

(2) The Central Government and its agencies and so also the State Governments shall within six months from today take appropriate steps to set up storage facilities for the exclusive storage of seized Narcotic Drugs and Psychotropic and controlled Substances and Conveyances duly equipped with vaults and double locking system to prevent theft, pilferage or replacement of the seized drugs. The Central Government and the State Governments shall also designate an officer each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order No.1/89 to ensure proper security against theft, pilferage or replacement of the seized drugs.

(3) The Central Government and the State Governments shall be free to set up a storage facility for each district in the States and depending upon the extent of seizure and store required, one storage facility for more than one district.”

3. Learned counsel submits that admittedly, no sampling was done under the supervision of the Magistrate. He also relied upon the judgment of Hon'ble Supreme Court in **Noor Aga v. State of Punjab**¹, particularly, para 91, which reads as follows

¹ (2008) 16 Supreme Court Cases 417

“91. The logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance with these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution.”

4. Further, he relied upon the judgment in the case of **Ranjitsingh Brahmajeetsing Sharma v. State of Maharashtra**², wherein the Hon’ble Supreme Court held at paras 47 and 48, which reads as follows:

“47. Does this statute require that before a person is released on bail, the court, albeit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the Court to record such a finding? Would there be any machinery available to the Court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?

48. Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on records only for grant of bail and for no other purpose.”

5. The Public Prosecutor has also produced CD file of the crime.

6. Admittedly there were 214 kgs of Ganja in 107 packets that were seized from the possession of these petitioners. In the confession and seizure panchanama of these petitioners admittedly, there is no mention of any sampling done in accordance with the

² 2005 STPL(LE) 34710 SC

standing order. However, in the last para of the complaint, it is mentioned as follows:

Further, I have drawn one packet of Ganja as sample from the seized contraband Ganja packets from above each three vehicles for forwarding the same to TSFSL, Hyderabad for analysis under a cover of panchanama in the presence of above mediators duly affixing their signed chits. Later brought all the above 5 persons with seized 107 ganja packets all weighing about 214 kgs 5 mobile phones 3 cars and net cash of Rs.2,10,000-‘ at about 8.30 hours on 17.01.2022 are handed over to the kind officer with a request to take legal action as per the Law against the above 5 interstate banned Narcotic Drug (Ganja) smugglers.”

7. As seen from the complaint and remand report, it is not specified as to from whom the said sample of Ganja was taken as 55 packets were seized from the 1st petitioner/A1 40 packets were seized from the 2nd petitioner/A2, 12 packets were seized from A10. When it is apparent from the record that sampling was done contrary to the standing instructions 1 of 1989, dated 13.06.1989, which is mandatory, it cannot be said that the police had followed the procedure prescribed under the NDPS Act. As stated by the Hon'ble Supreme Court in **Noor Aga's case (supra)**, the Standing Orders cannot be flouted and in the absence of substantial compliance of the Standing Orders, adverse inference has to be drawn against the prosecution.

8. From the record it is apparent that the Investigating Officer has not taken samples from each of the packets for the purpose of FSL examination. It is also not the case of the prosecution that any homogeneous mixture was made after finding that the contraband in all the said packets was dry Ganja, as required in 2.3 of Standing Order 1/89 for any duplicate sample to be drawn. For the sake of convenience, Standing Order 1/89, dated 13.06.1989 is extracted hereunder:

“WHEREAS the Central Government.....

Drawal of Samples:

2.2. All the packages/containers shall be serially numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witness (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchanama.

Quantity to be drawn for the sampling:

2.3 The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in cases of opium, ganja and charas (hasish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages/containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.”

9. When it is not even known as to from which packet the sample was taken out of 107 packets seized, there is a violation of 2.2 of Standing Order 1/89 also. Standing Order 2.3 provides that quantity of 24 grams in each has to be drawn for the chemical test. Neither the panchanama nor the complaint nor remand report makes a mention about the quantity of 24 grams being taken as sample for chemical test.

10. In the said circumstances, when there is blatant violation of Standing Order, the petitioners are entitled to be released on bail subject to following conditions.

i. The petitioners/A1 and 2 are directed to be released on bail on their executing personal bonds for Rs.1,00,000/-(Rupees one lakh only) each with two sureties each for a likesum, among which one is local surety and the other is native surety, to the satisfaction of the **I Additional District and Sessions Judge cum Special Judge for the trial of Cases under NDPS Act, Mahbubnagar.**

ii. After release on bail, the petitioners/A1 and A2 shall appear before the concerned police station, on every Monday

between 10.00 a.m. and 5.00 p.m., for a period of three months or until filing of charge sheet whichever is earlier.

iii. The petitioners/A1 and A2 shall comply with the conditions as laid down under Section 437 (3) of Cr.P.C.

Accordingly, the Criminal Petition is allowed.

K.SURENDER, J

Date: 05.07.2022
kvs

HONOURABLE SRI JUSTICE K.SURENDER

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