

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

CRIMINAL APPLICATION (BA) NO.190 OF 2020

(Vishambhar s/o Laxman Karmakar ..vs.. State of Maharashtra, through PSO, PS Kalmama, Nagpur)

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

Court's or Judge's orders

Shri R.M. Daga, Counsel for the applicant,
Shri P.S. Tembhare, Addl.P.P. for the non-applicant.

CORAM : ROHIT B. DEO, J.

DATED : 11-03-2020

The applicant whose attempt to secure bail from the Special Court failed, is seeking enlargement on bail in connection with Crime 446/2018 registered with Police Station Kalmama, Nagpur for offences punishable under Sections 20, 29 and 8(c) of the Narcotic Drugs and Psychotropic Substances Act.

2. In brief, the case of the prosecution is that the Crime Branch, Nagpur received secret information that contraband would be transported from Dantewada district in Chhattisgarh to Nagpur by Innova Car bearing registration CG-04/HD-8464. Pursuant to the said information trap was led, the vehicle was intercepted and 64 kg ganja was found in the vehicle.

3. The applicant was driving the vehicle and co-accused Manoj was accompanying him. The learned Special Judge was pleased to grant bail to Manoj

observing that he was merely present in the vehicle, that there is no material whatsoever to suggest that he was involved in any conspiracy, and indeed, Manoj was not aware that the vehicle was transporting contraband. The reasons recorded by the learned Special Judge for granting bail to Manoj read thus :

“On perusal of record, it appears that Ganja came to be seized from Innova Car, applicant and co-accused Vishambhar were found in the said vehicle at the time of raid. On perusal of statement of co-accused Vishambhar, it appears that he requested applicant to accompany him to visit Nagpur, as distance between Dantewada District, Chhattisgarh to Nagpur was long distance and co-accused Vishambhar assured applicant to pay Rs.5,000/- of the said trip. On perusal of statement of Faizan Khan s/o Abdul Wahid, it appears that it was the co-accused Vishambhar who came before 6 to 7 months to deliver Ganja to co-accused Firdos Khan @ Puppy. On perusal of both the statements, particularly statement of co-accused Vishambhar, it appears that applicant just accompanied him to Nagpur. At this stage, there is nothing on record to show that applicant hatched conspiracy with co-accused Vishambhar and absconding accused person to deliver the Ganja at Nagpur. Mere acquaintance with co-accused Vishambhar and mere presence in the vehicle, while transporting the Ganja, does not sufficient to constitute offence against applicant.”

4. Shri R.M. Daga, learned Counsel for the applicant would submit, and submit with vehemence, that the applicant is entitled to bail on the principle of parity. The submission is noted only for rejection.

5. The same submission was canvassed before the

learned Special Judge who dealt with the said submission thus :

“On perusal of record, it appears that 65kg. Ganja came to be seized from applicant from Innova Car and quantity of seize Ganja is of commercial quantity. On perusal of statement of witness Faizan Khan, it appears that said Faizan Khan was friend of Firdos Khan @ Puppy, earlier also applicant came to Nagpur to hand over Ganja to said Firdos Khan and at that time, Faizan Khan was accompanied him. It further appears that in the present case, Firdos Khan @ Puppy is wanted accused, and as per the case of prosecution, applicant came to Nagpur to hand over the seized Ganja to said Firdos Khan, but before that police arrested him along with co-accused. On perusal of statement of co-accused Manoj Madkami, it appears that applicant is the main culprit, who was in conscious possession of said Ganja to be delivered at Nagpur and said Manoj accompanied him at the say of applicant. In this backdrop, I do not find any substance that applicant was having no knowledge that Ganja was kept in his car.

On perusal of statement of applicant Vishambhar, it appears that he requested co-accused Manoj to accompany him to visit Nagpur, as distance between Dantewada District, Chhattisgarh to Nagpur was long distance and applicant Vishambhar assured applicant to pay Rs.5,000/- of the said trip. It further appears that co-accused Manoj just accompanied applicant to Nagpur. Hence role of applicant is totally different from co-accused Manoj and prima facie it appears that applicant is the main culprit in the present crime. Hence, he cannot claim bail on the ground of parity. Moreover, now charge is framed and case is fixed for evidence. It appears that Ganja of commercial quantity came to be seized and there is rider of section 37 of the NDPS Act to grant bail. At this stage, sufficient circumstances are available against applicant showing his involvement in the present crime. Considering all the facts and circumstances of the case, applicant is not entitled for bail.”

6. I have scrutinized the material on record and the statement of Faizan Khan.

7. While minute examination of the evidence ought to be avoided at the stage of consideration of entitlement to bail since the Court is not expected to conduct a mini trial, I have been invited to look into the statements by the persistence submission of Shri R.M. Daga that there is no distinguishing feature in the case of co-accused Manoj, who has granted bail and the present applicant. While the learned Special Judge granted bail to co-accused Manoj on the assumption that he did not know of the illegal transportation of the contraband and was requested by the present applicant to give him company since the journey was long, in so far as the present applicant is concerned, there is more than ample material on record to suggest that he is a habitual transporter of contraband.

8. The offence is serious and the maximum punishment is twenty years.

9. The applicant is resident of Dantewada district in Chhattisgarh. The possibility that the applicant shall not be available to face the trial, is a real possibility.

10. The application is dismissed.

JUDGE