

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

CRIMINAL APPLICATION (BA) NO. 386 OF 2020

(Shubham s/o Sunil Gobade **Vrs.** The State of Maharashtra, P.S.O., P.S. Ajni,
Nagpur, Dist. Nagpur)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.M. Daga, Adv. for the applicant.
Shri H.D. Dubey, APP for the non-applicant / State.

CORAM : PUSHPA V. GANEDIWALA, J.
DECEMBER 15, 2020.

Heard.

2 The applicant is seeking bail in Crime No. 322/2019 registered at Police Station Ajni, District Nagpur, for the offence punishable under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (N.D.P.S. Act).

3. It is the case of the prosecution that 114.136 kg Ganja was found in one abandoned car. During investigation it revealed that the said car was procured on rent in the name of Harshal Watkar.

4. The First Information Report came to be lodged against Harshal Watkar. During further investigation it revealed that the present applicant used license of Harshal Watkar to book the car on rent. Apart from the above material the prosecution could not point out any other substantive material against the present applicant.

5. The present applicant came to be arrested on the basis of confessional statement of the co-accused – Suraj. In this regard, the larger Bench of the Hon’ble Supreme Court in the case of **Tofan Singh Vs. State of Tamil Nadu** reported in **2020 (12) SCALE 519**, in paragraph No. 155, answered the reference as under :

“(i) That the officers who are invested with powers under Section 53 of the N.D.P.S. Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under Section 67 of the N.D.P.S. Act cannot be used as a confessional statement in the trial of an offence under the N.D.P.S. Act.”

6. It is further submitted that the co-accused – Suraj has already been released on default bail.

7. Considering the nature of the material available against the present applicant in the charge-sheet, at this stage the *prima facie* case for the alleged crime against the present applicant is not made out. The prosecution could not also point out any criminal antecedents and, therefore, it cannot be said that he is likely to commit the similar offence, while on bail.

8. In the above circumstances, this Court is inclined to grant him bail. Hence, the following order :

(i) The applicant – Shubham s/o Sunil Gobade be released on bail on executing Personal bond of Rs. 50,000/- (Rs. Fifty thousand only) with one surety in the like amount.

(ii) The applicant shall not enter the vicinity of the area where the witnesses reside.

(iii) The applicant shall not leave his local jurisdiction without prior intimation to the concerned police station.

(iv) The applicant shall not give threats to the witnesses or tamper with the evidence.

(v) The applicant to attend the concerned police station once in a month i.e. on every first Thursday of the month between 12.00 noon and 2.00 p.m.

(vi) Needless to say that the aforesaid observations are only for the purpose of deciding this application and the same shall not come in the way of the trial Court to decide the trial.

JUDGE

D.S. Baldwa