

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

LD-VC-CRIMINAL APPLICATION (BA) NO.361 OF 2020

Sainarendra s/o Madhusudan Kongara.

..VS..

State of Maharashtra, Through Police Station Officer, Railway Police Station, Wardha, Dist.
Nagpur Railway.

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

Court's or Judge's orders

Mr. V. N. Morande, counsel for the applicant.
Mr. N. B. Jawade, APP for the non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.

DATED : 13th JULY, 2020

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

Heard Mr. Morande, learned counsel for the applicant. He invites my attention to page 13, to contend that the search and seizure, is in violation to the provision of Section 42(1) of the NDPS Act, which mandates that the search and seizure, can only be conducted by an officer superior in rank to a Peon, Sepoy or Constable. He submits that the search and seizure has been made by Constable namely Suresh Rachalwar and, therefore the entire process is vitiated being contrary to the provisions of Section 42(1) of the NDPS Act. He further invites my attention to page 73 of the portion of the charge-sheet filed on record to contend that illegal seizure is being attributed to the applicant, as against the position that the bag on which Gaga was written was attributed to the accused No.1 instead of the applicant,

so as to create a situation of showing seizure of two bags from the applicant instead of one, in order to make it a commercial quantity. He therefore submits that, the entire prosecution is vitiated and the applicant is entitled to be released on bail.

Mr. N. B. Jawade, learned APP for the non-applicant/State, on the other hand opposed the same and points out that the search and seizure was made by one Vishal Ramdas Donekar PSI, whose rank is above that of the Constable. He further submits that even considering the arguments of Mr. Morande, learned counsel for the applicant, Mr. Suresh Rachalwar, is a Head Constable and not a Constable and, therefore the provisions of Section 42(1) of the NDPS Act have been duly complied with.

Insofar as, the other contention of Mr. Morande, learned counsel for the applicant regarding showing an additional bag seized from the applicant., the learned APP for the non-applicant/State invites my attention to the statement of the Head Constable Suresh Rachalwar which controverts the position as contended by the learned counsel for the applicant.

I have carefully considered the submissions of the learned counsels and I find that the search and seizure has been made by a person who is legally competent to do so, as contemplated by Section 42(1) of the NDPS Act, as the Head Constable as well as the PSI are both superior in rank to a Peon, Sepoy or Constable.

Insofar as the, contention regarding showing an additional bag in the custody of the applicant, the same is also not borne out from the FIR, or the statement of Head Constable Suresh Rachalwar and PSI Vishal Donekar. The quantity shown to be seized from the applicant, is admittedly a commercial quantity as same measures 20.670 Kgs. I therefore, do not consider that it is a fit case for grant of bail to the applicant. The criminal application is, therefore rejected.

Needless to say that any observations made in this order shall not affect the trial adversely.

This order be communicated to the counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

Sarkate