

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

CRIMINAL APPLICATION (BA) NO. 525/2021.

Rounak Mahesh Soni

-VERSUS-

The State of Maharashtra.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri R.M. Daga, Advocate for the Applicant.
Shri S.A. Ashirgade, APP for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : JULY 02, 2021.

Hearing was conducted through Video
Conferencing.

2. The applicant and two others were arrested on 18.06.2020 by the police of Sonegaon Police Station, District Nagpur in Crime No. 84/2020 for the offence punishable under Sections 22[c] and 29 of the of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act). Since then the applicant – accused namely Rounak Soni is in jail. The investigation is complete and charge sheet has been filed. The Special Court has declined to release the applicant on bail, hence, this application.

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3. On receipt of secret information, the police of Sonegaon Police Station, District Nagpur laid a trap to seize contraband, which they were informed to be carried by persons traveling in Innova car bearing registration No.MH20/CH-2997. The police complied with the initial formalities of passing information to the superior office and obtaining permission for seizure. As per information, the Innova car was about to enter in Nagpur on 18.06.2020 in wee hours. The raiding party laid trap, which yielded around 4.20 a.m. when they saw the desired car approaching towards Nagpur. The police accosted the car, introduced themselves and informed the purpose of raid to the occupants of the car who were four in number. The police also informed them about their right of getting searched in presence of a gazetted officer.

4. After completing the formalities, search was taken in which the contraband namely "Mephedrone" (MD) powder weighing 86.14 grams was found. Samples were taken and the contraband article was seized in presence of panchas. The police lodged report on which crime came to be registered vide Crime No. 84/2020. The applicant and

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two other co-accused were arrested for the offence punishable under Sections 21[c] and 29 of the NDPS Act.

5. The learned Counsel appearing for the applicant laid emphasis on the point that the entire prosecution case is based on statement of co-accused which itself is inadmissible. In this regard, he relied on the decision of the Hon'ble Supreme Court in case of **Tofan Singh .vrs. State of Tamil Nadu – 2020 (12) Scale 519**. It is the submission of the applicant that as per police papers, on seizure of a bag containing the contraband, the police enquired with the accused. Both the co-accused disclosed that the bag containing contraband is of the applicant Rounak Soni. Therefore, according to the learned Counsel for the applicant, in view of the above decision, the applicant cannot be connected with the crime, since statements of co-accused is totally inadmissible. This submission was made to impress that since both the co-accused who were occupants of the car were released on bail, and therefore, the applicant is also entitled for same treatment.

6. The State has strongly resisted the bail by filing reply-affidavit and pointing towards the clinching material

against the applicant about seizure of the contraband from his possession. It is submitted that the seized contraband is of commercial quantity, hence due to statutory bar, the applicant cannot be released on bail.

7. As per prosecution case, the police had arranged a trap on the basis of secret information. During search of the vehicle, the contraband article was seized. The police paper indicates that the applicant Rounak was sitting beside the driver, whilst other two co-accused were seated on back seat. A leather bag containing the contraband was kept beneath the front seat, where the applicant was seated. Though there are statements of co-accused that the bag belong to the applicant Rounak, however, it is essential to note that as per record, the bag was kept below the seat of the applicant showing his prima facie involvement in the crime. The police paper also indicates that the applicant has arranged to buy the contraband from his connection in Mumbai and accordingly it was obtained.

8. The claim of parity is misconceived, since parity is available to be claimed by a person, in case any other person similarly situated has been dealt with in a particular manner.

Both the co-accused were seated at the back seat of the car from where nothing was seized, whilst the applicant was particularly found with a bag containing the contraband weighing 86.14 grams kept below his seat. Prima facie the said position shows the applicants' conscious position regarding the seized contraband.

9. There is no dispute that the seized MD Powder was of commercial quantity. That being so, the limitation on granting bail specified in Clause [b] of Section 37[1] of the NDPS Act comes into play. The language employed in Section 37[1][b] of the NDPS Act also conveys the legislative intent that negation of a bail is a rule and grant is an exception, if it satisfies the conditions imposed therein.

10. Worthwhile to note that the NDPS Act is a Special Act, dealing with special class of crimes which is an International menace. The seizure of commercial quantity of a drug itself speaks volume about its use for sale. In a bid to make quick money, new generation is being ruined by such addiction.

11. The available material does not make out a case, prima facie to believe that the applicant is not guilty of the

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offence and that he is not likely to commit any offence if released on bail. Since no exception has been made out by the applicant, the restrictions imposed by Section 37 of the NDPS Act with its rigour would come into play.

12. The offence is of a serious nature having long standing social repercussions. The alleged offence is punishable with rigorous imprisonment, which shall not be than 10 years, and which may extend to 20 years. Considering the gravity, seriousness and specific material available against the applicant, he does not deserve to be enlarged on bail. Hence, Criminal Application is rejected with liberty to the applicant to apply a fresh after a period of 6 months, if charge is not framed.

JUDGE

Rgd.