

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

Criminal Application (BA) No. 702 of 2021

[Pangi Govind Pangi Shanka ..vs.. State of Maharashtra (P.S.O. G.R.P. Nagpur)]

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

Court's or Judge's orders

Mr. K. S. Ghatade, Advocate for the applicant
Mr. M. K. Pathan, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 26-07-2021

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

2. The applicant is seeking bail in connection with Crime 453/2020 registered with Police Station, G.R.P, Nagpur for the offences punishable under Sections 20(b)(ii)C and 29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act.

3. The allegation is that the applicant and co-accused were transporting *ganja* (cannabis) while travelling in G.T. Express.

4. The three accused occupied berths 66, 67 and 70. The railway police found the demeanor of the accused suspicious and it de-boarded them at Nagpur Railway Station along with their bags.

5. According to the prosecution, after complying with the necessary formalities, the bags were searched. The applicant was found in possession of 20.741 Kgs *ganja* and on the premise that Section 37 of the NDPS Act is attracted, the Special Judge rejected bail. I am informed that the two co-accused are released on bail on the premise that the *ganja* which was being transported by them was less than the commercial quantity.

6. Insofar as the applicant is concerned, the submission is that there is a clear violation of Section 50 of the NDPS Act since there is nothing on record to substantiate the prosecution version that Officer Smt. Suhasini read out the rights under Section 50 to the applicant in Telugu. Apart from the fact that it is not the case of the applicant that his person was also searched, it would not be possible to resolve the factual aspects

involved while considering bail. Such resolution is best left to the trial Court. Considering the material on record, it is not possible to record a satisfaction of existence or reasonable ground to believe that the accused has not committed an offence under the NDPS Act. I am, therefore, not inclined to grant bail.

7. Since parity is also invoked, apart from the fact that the learned Special Judge has held Section 37 to be not applicable, the thinking process underlying the grant of bail to co-accused will have to be revisited in an appropriate case. The question is whether if the the quantity is divided amongst the three accused with the intent of avoiding the rigours of Section 37, can some accused be permitted to take advantage of the fact that the quantity in their possession is less than the commercial quantity. One perspective may be that the commercial quantity is *qua* the offence and not the accused and if as a part of the same transaction, the same offence, the quantity is divided, each of the accused will have to satisfy the twin test of Section 37. The

learned Additional Public Prosecutor Mr. Pathan states that appropriate steps shall be taken to seek the cancellation of bail granted to the co-accused.

8. The application preferred by the applicant is dismissed.

9. Steno copy of this order be supplied to learned Additional Public Prosecutor as per rules.

JUDGE

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