

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

CRIMINAL APPLICATION (BA) NO. 969 OF 2021

(Vijay s/o Rajendra Shinde ..vs.. State of Maharashtra, through PSO, PS Karanja, Washim)

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

Court's or Judge's orders

Mr. C.S. Dharmadhikari, Counsel for the applicant,
Mr. N.S. Rao, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATED : 07-10-2021

The applicant is arraigned as accused in Crime 481/2019 registered with Karanja (City) Police Station, District-Washim, for offences punishable under Sections 8(c), 20(b)(ii)(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The prosecution case is that on 02-11-2019 Sub-Inspector Atul Mohankar received information from his sub-ordinate Assistant Sub-Inspector Bhagwan Gawande that secret information is received to the effect that between 10-00 p.m. and 11-00 p.m. cannabis (*ganja*) would be transported in i20 car bearing registration MH-29/R-7420 and gray Innova car bearing registration MH-03/BJ-7406, which vehicles are proceeding from Nagpur to Pune. The information was duly communicated to the Deputy Superintendent of Police and pursuant to go ahead given, the police squad accompanied by panchas set up a barricade at Koli Fata. Two vehicles were intercepted at 10-30 p.m. The driver of the i20 car

disclosed his name as Yash Dinkar Pawar and the two persons accompanying him disclosed their names as Pritesh Balasaheb Shinde and Mahesh Prakash Parande. A body search of the persons and the vehicle revealed cannabis weighing 50.700 kg. valued at Rs.12,67,500/- (Rupees Twelve Lac Sixty Seven Thousand Five Hundred). Similarly, the driver of the Innova car revealed his name as Vijay Rajendra Shinde, who is the applicant, and the two persons accompanying him disclosed their names as Dnyaneshwar Balasaheb Shinde and Ashutosh Kailash Gaikwad. The body search of the persons and the vehicle revealed cannabis weighing 49.650 kg. valued at Rs.12,41,250/- (Rupees Twelve Lac Forty One Thousand Two Hundred Fifty).

3. The applicant approached this Court in Criminal Application (BA) 464/2020 seeking bail. By an elaborate order dated 29-10-2020, the application was rejected *inter alia* noting that the quantity seized from the possession of the applicant is commercial quantity and that in view of the stringent provisions of Section 37 of the NDPS Act, it would be impermissible to grant bail in the absence of reasonable grounds to believe that the applicant is not guilty of the offence under the NDPS Act. This Court *inter alia* referred to the observations of the Hon'ble Supreme Court in ***Union of India v. Rattan Mallik Alias Habul, (2009) 2 SCC 624***, which read thus :

“12. It is plain from a bare reading of the non-obstante clause in the Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by sub-clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz; (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds."

13. The expression “reasonable grounds” has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [vide Union of India Vs. Shiv Shanker Kesari²]. Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.”

4. Undeterred, the applicant has preferred a successive application. While a successive application for bail is indeed permissible, it is well settled that unless there is a change in circumstances, and a change which is not cosmetic, it would be inappropriate to entertain a

successive bail application. Suffice it to refer to the observations of the Hon'ble Supreme Court in ***G.R. Ananda Babu v. The State of Tamil Nadu & Anr.*** [Criminal Appeal No.____ of 2021 (Arising out of SLP (Crl.) No.213 of 2021)] which observes thus:

“As a matter of fact, successive anticipatory bail applications ought not to be entertained and more so, when the case diary and the status report, clearly indicated that the accused (respondent No.2) is absconding and not cooperating with the investigation. The specious reason of change in circumstance cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge.”

5. A statement is made in paragraph 6 of the application that it was after the rejection of bail application by this Court that the CDR was placed on record. However, perusal of the communication dated 27-8-2020 which is annexed by the applicant himself, reveals that the CDR was indeed a part of the charge-sheet and was placed on record by taking recourse to Section 173(8) of the Criminal Procedure Code, 1973. At any rate and in any event, the CDR was available on record when this Court rejected the bail vide order dated 29-10-2020.

6. Even otherwise, the presence of the applicant in the car is indubitable. The material on record cannot be disbelieved nor can the suggestion of the applicant that the applicant was miles away and is falsely implicated as

the driver of the vehicle from which commercial quantity contraband is seized, be accepted, at this stage.

7. It would be apposite to refer to a relatively recent decision of the Hon'ble Supreme Court in ***Union of India v. Mohd. Nawaz Khan (Criminal Appeal 1043 of 2021 (Arising out of SLP (Cri) 1771 of 2021)***. Considering the submission of the accused, and which submission found favour with the High Court, that conscious possession is not established, the Hon'ble Supreme Court articulated that knowledge of possession has to be gleaned from the facts and circumstances of a case and that the standard of conscious possession would be different in a case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. The relevant observations of the Hon'ble Supreme Court read thus :

*“What amounts to “conscious possession” was also considered in **Dharampal Singh v. State of Punjab**, where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In **Mohan Lal v. State of Rajasthan**, this Court also observed that the term “possession” could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this knowledge.”*

The Hon'ble Supreme Court has further emphasized that in *Union of India v. Rattan Mallik Alias Habul*, it is observed that merely making a finding on possession of the contraband did not fulfill the parameters of Section 37(1)(b) of the NDPS Act and that a finding of absence of possession on the person of the respondent does not absolve the High Court of the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act.

8. While this successive application could have been rejected on the short ground that in absence of any change in circumstance, muchless a significant change, the application ought not to be entertained, even after revisiting the material on record, it is apparent that there is clinching and formidable *prima facie* material against the applicant and in any event, it is impossible to record a finding of existence of reasonable grounds to believe that the accused is not guilty of an offence under the NDPS Act.

9. The application is dismissed.

JUDGE

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