

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.272 OF 2022

1. Villautham Nagu
2. Venkatesan s/o Maruthamuthu
Balasubramaniyan ... **APPLICANTS**

VERSUS

The Intelligence Officer, Directorate of
Revenue Intelligence, Bangalore ... **RESPONDENT**

.....
Mr. Harshal Prakash Randhir, Advocate for applicants
Mr. Ajay G. Talhar, Standing Counsel for respondent
.....

CORAM : R. G. AVACHAT, J.

Date of reserving order : 10th October, 2022

Date of pronouncing order : 13th October, 2022

ORDER :

Heard. This is an application for bail under Section 439 of the Code of Criminal Procedure. The applicants are arrested in connection with Special (NDPS) Case No.17/2018, registered at Intelligence Officer, Directorate of Revenue Intelligence, Bangalore, filed under Section 36-A(1)(d) of the Narcotic Drugs and Psychotropic

Substances Act, 1985, for offences punishable under Sections 8(c), 9-A, 21(c), 22(c), 23(c), 28 and 29 read with 38 of the Narcotic Drugs and Psychotropic Substances Act, 1985, read with Section 135-A of the customs Act, 1962.

2. It is a case instituted on complaint lodged by Intelligence Officer, Directorate of Revenue Intelligence, Bangalore Zonal Unit against 7 accused including the present applicants. It is the case of the complainant that, a credible intelligence/ information was received to the effect that huge quantity of N.D.P.S. substance was illegally manufactured in the premises of M/s Pragati Electrical Works, Plot No.B-75, M.I.D.C., Omerga, District Osmanabad, Maharashtra by one Rajesh Bhansali (accused No.1) and three others. A raid was, therefore, effected on the premises of Pragati Electrical Works. It was found that, a powder substance of Methaqualone was being manufactured at the said unit. Methaqualone is a controlled substance under Narcotic Drugs and Psychotropic Substances Act, 1985 (N.D.P.S. Act for short). As a part of the same intelligence report, it was learnt that, Methaqualone was being transported in a Car bearing Registration No.KA-39 M 2117 from the said manufacturing unit towards Hyderabad. The officers of D.R.I., Hyderabad,

therefore, intercepted the Car at L & T Toll Plaza, Kamkole, Munipalli Mandal, Sangareddy District, Telangana. There were three persons, including the present applicants in the Car. The applicant No.1 was at the wheel of the Car. The D.R.I. officers introduced themselves to the inmates of the car. On thorough verification/ inspection/ search of the Car, a false casing behind the rear seat and side walls of the boot of the Car were noticed. The false casing was cleverly concealed by painting black colour over it to avoid suspicion. The doors were locked. The applicant No.1, on being required, opened the same. Some transparent packets with white colour powder were found in the casing attached to the walls of the boot. The officer cut open the packets and tested the material with Narcotic Drugs detection kit available with them. The substance tested positive for Methaqualone.

3. It is the case of the prosecution that, the total weight of the contraband seized from the Car was 49.750 Kg. It was much more than a commercial quantity. The value thereof was Rs.22,93,70,000/- (Rupees twenty two crores ninety three lakhs and seventy thousand), rate Rs.50 Lakhs per Kg. The powder was separated in requisite quantity for chemical analysis. The report of the C.A. indicates the same

to be Katamine Hydrochloride, psychotropic substance, liable for confiscation under Section 60 of the N.D.P.S. Act.

4. All the three persons in the Car were taken into custody. The complaint came to be lodged. Some of the accused are absconding.

5. Mr. Harshal Randhir, learned counsel for the applicants would submit that, the applicants were free lance drivers. They did not know what the Car contained. After having arrived at Omerga, they were kept at some hotel. A third person took away the Car and came back after a while. The applicants were supposed to return in the Car to Hyderabad. The learned counsel would further submit that, co-accused Vijaykumar Lakshmananm, one of the inmates of the Car has been granted bail by this Court. The learned counsel has mainly asked for bail on the ground of parity. He would further submit that, the applicants have been behind the bars for little over four years. The charge has not yet been framed. He would further submit that, Section 42 of the N.D.P.S. Act has not been complied with. The learned counsel, therefore, urged for grant of the application. The learned counsel relied on the following authorities :

- (1) Sarija Banu Alias Janarthani Alias Janani & anr. Vs.
State through Inspector of Police [(2004) 12 SCC 266]
- (2) Smt. Najma Abdul Shaikh Vs. The State of Maharashtra
(Criminal Bail Application No.1311/2012)
- (3) Rajaram Kadu Vs. The State of Maharashtra
(Bail Application No.2108/2016)
- (4) Bipin Kumar Ramsagar Pandit @ Saxena Vs. State of
Maharashtra [(2013) 6 AIR Bom R. 126]
- (5) Abdul Rashid Ibrahim Mansuri Vs. State of Gujarat
(2000) 2 SCC 513
- (6) State of Punjab Vs. Balbir Singh [(1994) 3 SCC 299]
- (7) Beckodan Abdul Rahiman Vs. State of Kerala
(2002) 4 SCC 229

6. Mr. Talhar, learned Standing Counsel for the respondent would submit that, the applicants were in the know that they were transporting the contraband. It is only during trial of the case they may make out a case of having been not in conscious possession of the contraband. There is interdict of Section 37 of the N.D.P.S. Act to grant bail to the applicants since the quantity of the contraband seized was more than commercial one. So far as regards grant of bail to

co-accused is concerned, the respondent has preferred Special Leave Petition before the Hon'ble Supreme Court. A notice has been issued in the matter. Compliance of Section 42 is a question of fact. The same could only be decided during trial of the case after the officer concerned is given opportunity to explain irregularity, if any, in compliance of mandate of Section 42. The learned Standing Counsel, therefore, urged for rejection of the application.

7. Perused the complaint and the documents relied on. Although the issue as to non-compliance of provisions of Section 42 of the N.D.P.S. Act could be considered while deciding an application for bail, there is a document on record to prima facie indicate compliance of Section 42 of the N.D.P.S. Act. There is voluminous record to indicate that pursuant to an intelligence report, raid was effected on the premises of Pragati Electrical Works. It was found that, a powder substance of Methaqualone was being manufactured at the said unit. Methaqualone is a controlled substance under Narcotic Drugs and Psychotropic Substances Act, 1985 (N.D.P.S. Act for short). As a part of the same intelligence report, it was learnt that, Methaqualone was being transported in a Car bearing Registration No.KA-39 M 2117

from the said manufacturing unit towards Hyderabad. The officers of D.R.I., Hyderabad, therefore, intercepted the Car at L & T Toll Plaza, Kamkole, Munipalli Mandal, Sangareddy District, Telangana. It was found that Katamine Hydrochloride was being manufactured at the said Unit and at one more Unit as well. Pursuant to the very intelligence report, Car bearing Registration No.KA-39 M 2117 was intercepted. Both the applicants and one who has been granted bail, were in the Car. The applicant No.1 was at the wheel of the Car. On required by the officers of D.R.I., he opened the locks. On thorough verification/ inspection/ search of the Car, a false casing behind the rear seat and side walls of the boot of the Car were noticed. The false casing was cleverly concealed by painting black colour over it to avoid suspicion. The doors were locked. The applicant No.1, on being required, opened the same. Some transparent packets with white colour powder were found in the casing attached to the walls of the boot. The officer cut open the packets and tested the material with Narcotic Drugs detection kit available with them. The substance tested positive for Methaqualone.

8. The C.A. report indicates the seized contraband Katamine Hydrochloride which was more than commercial

quantity. Value thereof was Rs.22,93,70,000/-.

9. Each case has to be decided on peculiar facts and circumstances obtainable therein. The applicants were from Hyderabad. The Court has reason to believe that they were assigned the job of transport/ convey the contraband from its manufacturing place to Hyderabad for onward distribution. The offence is serious one. The Apex Court, in case of Union of India through Narcotics Control Bureau, Lucknow Vs. Md. Nawaz Khan reported in (2021) 10 SCC 100, observed in paragraphs No.20, 23, 25, 26 and 32 as under :

“20. Section 37 of the NDPS Act regulates the grant of bail in cases involving offences under the NDPS Act. Section 37 reads as follows:

“(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (ii) where the Public

Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

(emphasis supplied)

23. Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed.

25. In *Madan Lal and Another v. State of Himachal Pradesh* 16 this Court held that :-

“19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.

20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.

21. It is highlighted that unless the possession was coupled with the requisite mental element i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

22. The expression “possession” is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in *Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja* [(1979) 4 SCC 274 : 1979 SCC (Cri) 1038 : AIR 1980 SC 52] to work out a completely logical and precise definition of “possession” uniform[ly] applicable to all situations in the context of all statutes.

23. The word “conscious” means awareness about a particular fact. It is a state of mind which is deliberate or intended.

[...]

26. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is

the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.”

26. What amounts to “conscious possession” was also considered in *Dharampal Singh v. State of Punjab* [(2010) 9 SCC 608], 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* [(2015) 6 SCC 222], 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.

32. Further, it was held that the issue of whether there was compliance of the procedure laid down under Section 42 of the NDPS Act is a question of fact. The decision in *Karnail Singh* (supra) was recently followed by this Court in *Boota Singh v. State of Haryana* [2021 SCC Online SC 324].”

10. The averments in the complaint prima facie indicate the applicants to have been in the know that they were transporting the psychotropic substance of more than commercial quantity, worth thereof was over Rs.22 Crores. Their being behind the bars for little over four years is of little consequence in the face of interdict of Section 37 of the

N.D.P.S. Act. The applicants and the one in the car, who has been granted bail, were there to drive the Car by turn, as it was a long distance travel. The D.R.I. has challenged the order granting bail to one of the inmates of the car. The Apex Court has issued notice in the said matter. Considering all these facts, this Court is not inclined to grant the applicants bail. The Bail Application is rejected.

(R. G. AVACHAT, J.)

fmp/-