

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.2509 OF 2022

Manoj Sambhaji Nagane

Applicant

Versus

State of Maharashtra

Respondent

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Mr. Ayaz Khan, Advocate for the Applicant.

Mr. A. A. Palkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 21st OCTOBER, 2022

PC :

1. The applicant is seeking pre-arrest bail in connection with C.R. No. 661 of 2021 registered with Vijapur Naka Police Station, District Solapur for offences punishable under Sections 8(c), 20(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “NDPS”).

2. The case of the prosecution is that, on 8th November 2020, the complainant and others were on patrolling duty. They noticed two vehicles viz. Innova and Tavera car driven in full speed. On suspicion the vehicles have chased and the inmates of vehicles asked to stop. They did not stop. The police managed to intercept the vehicles and two persons got down from the vehicles and started

running. The person driving Tavera Car managed to escape with the vehicle. The police chased the persons, who got down from Innova car and were running from the stop. They managed to apprehend one person. The other person fled from the place of incident. The person, who was apprehended was brought near the vehicle. The Innova vehicle was bearing registration No.MH-04-DJ-3715. The apprehended person gave his name as Sukhdev @ Vikas Yashavant Rathod, resident of Solapur. He opened the door of vehicle and it was noticed that there were several packets lying in the vehicle. It was suspected that the packets were containing Ganja. The vehicle was taken to police station. Attempt was made to search the person, who managed to flee from the spot. Panch witnesses were arranged. The packets lying in the car were found containing Ganja weighing about 623.65 kg. The FIR was registered on 19th December 2021. Mr. Sukhdev Yashavant Rathod was arrested.

3. During the course of investigation, another accused Mr. Anil Ramesh Rathod was arrested on 22nd December 2021. Both were remanded to custody. Both accused were produced before the Court for remand. They were further remanded to custody. Investigation proceeded. During the course investigation, involvement of the applicant was disclosed. He could not be arrested. Report dated 6th April 2022 was filed before the Special Judge at Solapur seeking

issuance of Non-Bailable-Warrant against the applicant. In the said report it was stated that, the investigation revealed that the applicant (Accused No.7) had accompanied the other accused for bringing seized ganja. Attempt was made to arrest him. He is evading arrest. Vehicle bearing No.MH-12-JM-7503 was required to be recovered from him. The applicant was in possession of vehicle bearing No.MH-12-JM-7503 which was travelled along with vehicle bearing No. MH-04-DJ-3715 and that the said fact is recorded in CCTV footage of Toll Nakas. The cellphone bearing number 8446190523 used by the applicant during the commission of offence is in the name of his relative Ramesh Navnath Ingavale and during interrogation of the said relative it was disclosed that the applicant is using the said cellphone. Several attempt were made to trace the applicant but he could not be traced and therefore Non-Bailable-Warrant issued against him. Learned Special Judge vide order dated 7th April 2022 issued Non-Bailable-Warrant against the applicant, returnable on 30th April 2022.

4. The applicant preferred an application for anticipatory bail before the Special Judge, Solapur which was rejected vide order dated 13th July 2022. While rejecting the said application it was observed that, there are 7 accused involved in the crime. Accused Nos.1 and 5 were arrested and other accused are absconding.

Commercial quantity of Ganja is seized. It appears from police papers that, Ertiga vehicle bearing No. MH-12-JM-7503 was found along with Innova vehicle in the CCTV footage of Talmod Toll Plaza of Solapur to Hyderabad road and also at Toll Plaza at Solapur. The applicant is owner of said Ertiga vehicle. It is apprehended that, the applicant was piloting the Innova car carrying Ganja, in his Ertiga vehicle at the relevant time. The said vehicle is yet to be seized. There was conversation between applicant and other accused on mobile phone. The police papers prima facie shows complicity of applicant in the alleged crime. The offence is serious in nature. Since registration of crime, the applicant is absconding. Investigation of the crime with respect to present applicant is going on. Considering the nature of accusations and gravity of offence, it cannot be said that, custodial interrogation of the applicant is not warranted.

5. Learned Advocate for the applicant submitted that there is no evidence showing involvement of the applicant in the offence. Neither accused No.1 nor accused No.5 have named the applicant or his vehicle Ertiga. Remand application of the co-accused dated 27th December 2021 refers to the fact that the Tavera vehicle was driven by accused No.5 and in the said vehicle accused Nos. 3 and 4 were also present. The said vehicle was piloting the Innova Car which is

carrying contraband Ganja. Hence, the prosecution's allegations that, the applicant's Ertiga car was piloting is afterthought. The allegation is made at belated stage. There is no statement in the charge-sheet, which indicates that the contraband was procured from the State of Andhra Pradesh or a particular from city in Andhra Pradesh. There is no statement of any witness indicating that, the applicant's car was seen in Andhra Pradesh or in a city in Andhra Pradesh. The allegation is that, the applicant's Ertiga car was noticed at Fulwadi Toll Plaza. The Fulwadi Toll Plaza is more than 53 kms away from the alleged spot. This could not be a reason to show the involvement of the applicant. The applicant is a resident of Solapur and it is natural that his car could be seen at Fulwadi Toll Plaza. The CCTV footage at Fulwadi Toll Plaza does not indicate that the applicant was in the vehicle or driving the vehicle. It is not the prosecution case that the accused No.6 was in the Ertiga car of the applicant. The accused No.6 has been roped in because he was in contact with accused No.1. It is alleged that the accused No.6 was in contact with the applicant. No details are given when accused No.6 was in contact with applicant. Accused No.6 is the brother-in-law of the applicant. The same is reflected in the statement of the applicant's brother Akash Nagane. Assuming that, there was contact between accused No.6 and the applicant, it is natural that, relatives are

speaking to each other and no adverse inference can be drawn. Custodial interrogation of the applicant is not necessary. The applicant was not found in possession of any contraband. The statement of co-accused is not admissible in evidence. Reliance is placed on the decision of Supreme Court in the case of Nikesh Tarachand Shah Vs. Union of India¹ and Order dated 2nd December 2020 passed by Apex Court in the case of Seesh Singh @ Mor Vs. The State of Punjab in Criminal Appeal No. 822 of 2020.

6. Learned APP submitted that the application for anticipatory bail is not maintainable in law. The applicant is involved in offences under the NDPS Act. Powers under Section 438 of Cr.PC. cannot be exercised for granting pre-arrest bail for offences under NDPS Act. Section 36-A of the NDPS Act relates to offences triable by Special Court and sub-Section 3 provides that nothing contained in the said section shall be deemed to effect the special power of the High Court regarding Bail under Section 439 of Cr.PC. It is submitted that, the reference is only to provision for grant of bail under Section 439 of Cr.PC. Under Section 37 of the NDPS Act refers to the limitation for grant of bail. Both provisions are silent about Section 438 of Cr.PC. Hence, this Court cannot be exercise powers under Section 438 of Cr.PC. and entertained the application of pre-arrest bail.

¹ AIR 2017(SC) 5500

7. On merits of the case, it is submitted that there is sufficient evidence showing involvement of the applicant in the offence. Custodial interrogation of the applicant is necessary. The car of the applicant was piloting. The Innova car was carrying huge contraband of ganja. It was commercial quantity. The value of Ganja recovered from the car driven by co-accused is of Rs.1,24,73,000/-. Interrogation of the arrested accused disclosed involvement of the applicant in the offence. The vehicle of the applicant was seen in CCTV footage of Toll Plaza. Investigation revealed the complicity of the applicant in the crime. It is the case of the prosecution that it was revealed during the course of investigation that the accused Nos. 6 and 7 (applicant) had visited alongwith Maruti Ertiga Car bearing No.MH-12-JM-7503 to Andhra Pradesh on 16th December 2021. They purchased Ganja along with accused Nos.1 to 3 at Andhra Pradesh and returned with them. Investigation relating to CDR indicate that, the tower location of the accused was same at Andhra Pradesh to Solapur during travel from Andhra Pradesh Toll Naka and Talmod Toll Naka. The vehicles Innova and Ertiga CCTV footage has been seen in CCTV footage which has been collected for the purpose of investigation. There were calls between the applicant and the co-accused. The statement of Sagar Kolekar was recorded on 4th January 2022. His statement mentions that, he decided to sell his

Ertiga car in August 2021 and he had informed about it to villagers. The applicant had visited his house to see his vehicle. He decided to purchase it. It was purchased for consideration of Rs.4,81,000/-. The applicant parted an amount of Rs.2,68,000/- to the said witness towards purchase of car. The statement of Ramesh Ingawale was recorded on 30th March 2022. He has stated that, the applicant is related to him. The witness had purchased mobile bearing number 8446190523 and since then the said phone is used by the applicant. The applicant has used the said phone while committing the offence.

8. Learned APP relied upon the decision in the case of *Narcotics Control Bureau Vs. Mohit Aggarwal*², Order dated 24th August 2021 passed by Apex Court in the case of *Ashish Vs. State of Maharashtra* and Order dated 24th November 2018 passed by this Court in Anticipatory Bail Application No.865 of 2018 in the case of *Suraj @ Gundy Manohar Macharekar V/s. The State of Maharashtra*.

9. As far as the merits of the case is concerned, I find that there is sufficient material showing involvement of the applicant. I find that prima facie there is evidence to show involvement of the applicant in the offence. The investigation and interrogation is revealed the complicity of the applicant in the crime. There is exchange of calls between the applicant and co-accused. The vehicle of the applicant

2 AIR 22 SC 3444

was seen in the CCTV footage at Toll Nakas. Huge quantity of Ganja was found from the possession of co-accused. The offence is serious in nature. Custodial interrogation of the application is necessary.

10. Section 37 of the NDPS Act refers to the restrictions for grant of bail. In the absence of specific bar under the Act, the Court cannot infer that there is no provision for exercising powers under Section 438 of Cr.P.C. what is not specifically provided by the legislature cannot be presumed by this Court for not exercising powers under Section 438 of Cr.P.C. It cannot be said that the application for anticipatory bail is not maintainable on the ground that the powers under Section 438 Cr.P.C. is not applicable for offences under NDPS Act. As a illustration it can be seen that, Section 21(4) of MCOC Act impose restrictions for grant of bail. There is similar embargo under Section 37 of NDPS Act. However, sub-section (3) of Section 21 of MCOC Act specifically provides that nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under the Act. There is no such legal bar provided under the NDPS Act. Thus, the submission of learned APP that application under Section 438 of Cr.P.C. is not maintainable in law cannot be accepted.

11. However, in the present case, there is sufficient material against the applicant as stated above and hence he is not entitled for

the relief under Section 438 of Cr.P.C. Hence, I pass the following order:-

ORDER

Criminal Anticipatory Bail Application No.2509 of 2022 is rejected.

(PRAKASH D. NAIK, J.)