

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1422 OF 2022**

Ajay Vijay Gagde ... Applicant
versus
The State of Maharashtra ... Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.1434 OF 2022**

Madhuri Vijay Gagde ... Applicant
versus
The State of Maharashtra ... Respondent

Mr. Mithilesh Mishra with Ms. Agastya Desai, Mr. Raju Mate, for Applicants.
Mr. P.H.Gaikwad, APP, for State.
Mr. V.V.Sutar, PSI Mundhwa Police Station, present.

CORAM: N.J.JAMADAR, J.

DATE : 15th JUNE, 2022

P.C.

1. These applications for pre-arrest bail are preferred by the brother – sister duo in connection with C.R.No.87 of 2022 registered with Mundhwa Police Station, Pune, for the offences punishable under Sections 8(c) read with 22(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the NDPS Act').

2. On 1st April, 2022 a police party of Mundhwa Police Station was on a patrolling duty within the local limits of the jurisdiction of the said police station. At about 2.40 p.m., when the police party came in an open area near *gairan vasti*, Keshav Nagar, a lady was found carrying a white nylon bag. After noticing police party, the

said lady attempted to flee away. She was apprehended. She identified herself as Bindiya Vijay Gagde. Upon the search of the nylon bag, which the said lady was carrying, it was found to contain 2 kgs. 225 gms *ganja*. The contraband article was seized. Samples were collected. The said accused Bindiya Vijay Gagde is the mother of the Applicants. Investigation revealed that Vijay – Applicant in ABA 1422 of 2022, was working as a driver on a transport vehicle. Once a fortnight, he used to go to Belgaum, Karnataka and bring *ganja* therefrom. The accused Bindiya Vijay Gagde and his sister Madhuri – Applicant in ABA No.1434 of 2022, were selling the said *ganja* in Kharadi and Keshav Nagar area. Thus, apprehending the arrest, the Applicants have preferred these applications.

3. The learned Counsel for the Applicants submitted that no contraband article was found in possession of the Applicants. They are sought to be roped in, at best, on the basis of the statement of the co-accused. In the absence of any material to connect the Applicants with the crime, the personal liberty of the Applicants cannot be jeopardized. Hence, the Applicants deserve the exercise of discretion under Section 438 of the Code of Criminal Procedure, 1973.

4. In opposition to this, the learned APP submitted that there are statements of witnesses which clearly incriminate the Applicants. The Applicant – Madhuri has also made an extra judicial confession before one of the witnesses, whose statement has been recorded. At this juncture, according to the learned APP, the

aforesaid material is adequate to warrant the custodial interrogation of the Applicants.

5. In Anticipatory Bail Application No.1434 of 2022, this Court by an order dated 6th June, 2022 was persuaded to grant interim pre-arrest bail, noting that the Applicant was sought to be implicated on the basis of an extra judicial confession allegedly made by her. The Court noted that the Applicant was not found in possession of any contraband article.

6. I have perused the statement of witnesses. The witness, before whom the Applicant – Madhuri allegedly made an extra judicial confession stated that he used to drop the the Applicant – Madhuri in his autorikshaw at Kharadi by-pass every morning. Initially, the Applicant – Madhuri did not disclose her avocation. Upon being probed, the Applicant – Madhuri stated that the Applicant – Ajay brings *ganja* from Belgaum, Karnataka and she and her mother Bindiya, sell the same in the nearby Kharadi and Keshav Nagar area. Whether the aforesaid statement constitutes an extra judicial confession, is debatable. Two other witnesses have stated that they have known that the Applicant – Ajay brings *ganja* from Belgaum, Karnataka and the co-Applicant – Madhuri and co-accused Bindiya sell the same in the vicinity.

7. In the backdrop of the aforesaid nature of the material sought to be pressed against the Applicants, the submission on behalf of the Applicants that they are sought to be roped in on the basis of the statements, the admissibility and veracity of which are contestable, appears to carry substance.

8. The learned Counsel for the Applicants invited the attention of the Court to the following observations of the Supreme Court in the case of Seesh Singh @ Mor V/s. State of Punjab¹ :

“We need not go into the issue, as it is evident that the Appellant was bailed out in that matter and presently it is only through the statement of a co-accused that the involvement of the appellant is sought to be made. Therefore, without entering into the merits or demerits of the rival contentions, in our view, the appellant is entitled to the facility of anticipatory bail in the present matter.”

9. The aforesaid observations may govern the facts of the case with equal force.

10. In any event, the co-accused Bindiya was not found in possession of commercial quantity of *ganja* and, thus, the interdict contained in Section 37(1) of the NDPS Act, prima facie, does not come into play. In the aforesaid view of the matter, I am persuaded to exercise the discretion in favour of the Applicants. Hence, the following order :

ORDER

(i) Anticipatory Bail Application No.1434 of 2022 stands allowed.

(ii) The order passed by this Court dated 6th June, 2022 granting interim pre-arrest bail to the Applicant – Madhuri Vijay Gagde, stands confirmed on the terms and conditions incorporated therein.

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- (iii) Anticipatory Bail Application No.1422 of 2022 also stands allowed.
- (iv) In the event of the arrest of the Applicant – Ajay Vijay Gagde in C.R.No.87 of 2022 registered with Mundhwa Police Station, Pune, for the offences punishable under Sections 8(c) and 22(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985, he be released on bail on furnishing a PR bond in the sum of Rs.25,000/- and one or two sureties in the like amount.
- (v) The Applicant – Ajay Vijay Gagde shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- (vi) The Applicant – Ajay Vijay Gagde shall furnish his residential address as well as contact details to the Investigation Officer and shall update the Investigating Officer about the change, if any, in the address and contact details.
- (vii) The Applicants – Ajay Vijay Gagde and Madhuri Vijay Gagde, shall co-operate with the investigation and attend Mundhwa Police Station on every alternate Sunday from 10.00 a.m. to 1.00 p.m. for a period of two months or till the filing of the chargesheet, whichever is earlier.

(N.J.JAMADAR, J.)