IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2711 OF 2021

Nadipenti Appalanaidu Bhaskarrao .. Applicant

Versus

The State of Maharashtra .. Respondent

…

Saumitra Salunke, for the applicant.
Smt. A.A. Takalkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 15th JUNE, 2022

P.C:-

1 The applicant, came to be arrested in connection with CR No.I-154 of 2020 registered with Chitalsar Police Station for the offence punishable under section 8(c) read with Section 20 (c) of the NDPS Act. Since the date of his arrest, he is incarcerated. On completion of investigation, on 27/1/2021, the charge-sheet came to be filed. The learned Special Judge, Thane, rejected his bail application on 4/3/2021. Hence, he has approached this Court.

2 Heard Learned Counsel Shri. Saumitra Salunke i/b by P.R. Yadav for the applicant and learned APP Mrs. Takalkar for the State. The Investigating officer Shri.Surwade, of Chitalsar Police Station is also present in the Court.

3 The secret information was received on 31/07/2020, to the effect that one truck was about to enter in Thane district and it was carrying huge quantity of Ganja. Pursuant to the information, the raiding team proceeded to the spot and they were informed that the truck with the number supplied, was found near a dilapidated building in an abandoned state. The members of the raiding team found some gunny bags lying inside and it contained contraband substance '*Ganja*' weighing 691 kgs. It was tested and found to be a Narcotic drug i.e. Ganja. On its seizure, a complaint came to be lodged. Four accused persons came to be arrested in connection with the illegal trafficking and seizure of the contraband substance.

4 The applicant was not named in the subject FIR but during investigation, one of the co-accused Akash disclosed his name. That is how he was arraigned as an accused.

5 The counsel for the applicant, would submit that the applicant was appointed as a Business Correspondent Agent (BCA) of Yes Bank and had a valid licence/certificate to operate as such, within the frame work of RBI rules and regulations. He was authorized to facilitate the banking transaction of migrants Unbanked and under banked population in India for the product 'Yes Money'. The money which was received by the applicant as its agent was processed by Yes Bank using National Electronic Fund Transfer (NEFT) and Immediate Payment Service (IMPS) technology. In the whole transaction, the

applicant received certain percentage from the bank in his capacity as agent, the transactions being governed by the prevailing Banking system. The learned counsel would submit that Yes Bank, through the network of BCAs such as the present applicant offer service such as domestic money remittance, prepaid card, and cash management solution.

The learned Counsel would submit that whatever money was received by him was received in the said transaction, with no nexus being established with the illegal trafficking of drugs/contraband substance.

When the learned APP was asked to point out the material against the applicant in the charge-sheet, she would refer to the statement of accused no.1, who allege that accused no.6 has deposited the amount received by him after selling of Ganja, into the account of the present applicant with the help of two witnesses and the present applicant transferred the money to the account of one Addianna and Nari. The learned APP relied upon the statement of two witnesses in the charge-sheet one of Santosh Gupta and another of Chetan Shah.

When the statement of Santosh is carefully perused, he has stated to the police that on 8/08/2020, Mukesh Maurya through one unknown person handed over Rs. 4,00,000/- to him with an instruction to transfer this amount to Axis bank account of the present applicant and thereafter along with his friend Shiva transferred a sum of Rs. 3,95,000/- to the account of the applicant using the cash deposit machine and transferred the remaining amount of Rs. 50,000/-. The said witness has stated that on 2/07/2020 Mukesh Maurya handed over to him Rs. 6,00,000/- for transferring the sum to account of the present applicant and once again he and his friend used the cash deposit machine to transfer sum of Rs. 5,83,600/- to the account of the present applicant and transferred remaining sum of Rs. 16,200/- from his shop.

Chetan Shah whose statement is also compiled in the charge-sheet reveal that he told the police that, on 11/06/2020, he transferred sum of Rs. 17,900/- through machine to the account of the present applicant on instruction of Adianna.

Going by the two statements, it can be seen that the co-accused deposited the cash into account of the applicant but the charge sheet do not contain any material to connect him to the alleged transactions of trafficking of the contraband or to the accused persons. The statements of the two witnesses in the charge-sheet also set out the details of the persons and the accounts wherein amounts ranging from Rs. 10,000 to 20,00,000/- has been transferred. However, there is no corresponding material complied in the charge-sheet to that effect.

6 The learned APP also relied upon the statement of the truck driver who has stated that Mukesh Maurya on selling the contra band was in the process of transferring the amount

through the persons who were in the business of money transferring i.e. Chetan and Santosh to Addianna and from where the money get transferred to the account of Narri. This statement is however of no consequence since it is not accepted that the truck driver would be aware of the details of the transactions.

7 In the wake of the material compiled in the charge-sheet, which charged the applicant under section 8 (c), which prohibit certain operations including production, manufacture, possession, sale, purchase, transport, use, consume etc of a Narcotic Drug or Psychotropic substance, the applicant cannot be accused of the same. As far as section 20 (c) is concerned, which provides punishment for contravention in relation to the Canabis plant and Canabis is concerned, the material compiled in the charge-sheet was short of the said charge.

In any case, there is no recovery of Ganja of the contraband at his instance, and there is no possibility of tampering with the prosecution witnesses, since he is resident of Vishakapatnam, Andra Pradesh. It is only to be ensured that he face the trial. The investigation being complete, the material is already compiled in the charge-sheet. Hence, I deem it fit to release the applicant on bail. On considering the material in the charge-sheet. Hence the following order :-

O R D E R

(a) The Applicant – Nadipenti Appalanaidu Bhaskarrao in connection with C.R.No.154/2020 registered with Chitalsar Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.50,000/- with one or two sureties of the like amount.

(b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(c) The Applicant shall attend the trial on every date unless exempted. Two consecutive date of absence in the trial without permission of the Special Court will entitle the prosecution to prefer an application for cancellation of his bail.

Application is disposed off in the aforestated terms.

(SMT. BHARATI DANGRE, J.)

Ashish Mhaske