

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2507 OF 2022

Surekha Ajay Jadhav	...	Applicant
Vs.		
State of Maharashtra	...	Respondent

Mr. Mithilesh Mishra a/w. Mr. Raju Mate i/b. Mr. Shrinath Mate for Applicant.

Ms. Sharmila S. Kaushik, APP for Respondent-State.

CORAM : NITIN W. SAMBRE, J.

DATE : SEPTEMBER 14, 2022

P.C. :

Heard.

2. The applicant is seeking pre-arrest bail in Crime No.218 of 2022 registered with Vimantal Police Station, Pune for the offence punishable under Sections 8(c), 20(b)(ii) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

3. The prosecution case against the applicant is that the co-accused Suvarna, who happened to be the daughter of the applicant, was found in possession of 16 kg and 560 gms of *ganja*. The applicant is apprehending her arrest in the aforesaid crime based on the statement made by the said co-accused Suvarna (applicant's daughter) as during investigation, the said co-accused Suvarna from whose custody the contraband was seized has mentioned the applicant to be one of the sources.

4. While trying to make out the case for grant of bail, counsel for the applicant would invite attention of this Court to the complaint dated 10.06.2022. According to him, the material which is seized from the custody of the co-accused Suvarna cannot fall within the definition of the 'narcotic substance'. So as to substantiate his contentions, he has drawn support from the provisions of Section 2(iii)(b) of the NDPS Act. So as to substantiate aforesaid arguments, he has drawn support from the

order of this Court delivered in Anticipatory Bail Application No.2173 of 2022 decided on 29.08.2022. His contentions are that the said seized goods will not fall within the aforesaid definition and particularly when the report from the Forensic Science Laboratory is not produced with the charge-sheet, the applicant is entitled for pre-arrest bail.

4.1. In addition to above, he would urge that based on the statement of the co-accused Suvarna, the applicant cannot be implicated in the crime in question. He would draw support of the order of the Apex Court in Criminal Appeal No.822 of 2020 (*Seesh Singh @ Mor Vs. State of Punjab*) decided on 02.12.2020.

5. Learned APP would oppose the aforesaid prayer as according to her the contraband which was recovered from the custody of the co-accused Suvarna (applicant's daughter) also contains wet *ganja* as is specifically mentioned in the complaint dated 10.06.2022. According to her, the custodial interrogation of the applicant is necessary as the applicant appears to be one of the sources of such contraband.

6. I have appreciated the aforesaid submissions.

7. The claim put forth by counsel for the applicant that the contraband which was seized from the custody of the co-accused Suvarna cannot fall within the definition of the 'narcotic substance' under the NDPS Act, in my opinion, is liable to be rejected. The complaint in categorical terms speaks of not only the items which if processed will give the final output of *ganja* but also contains wet *ganja*. As such, the claim put forth cannot be accepted. *Prima facie*, there is enough material on record to infer that what was seized from the co-accused Suvarna was *ganja* and other material. That being so, the said contentions are rejected.

8. Contentions of counsel for the applicant that, based on the statement of the co-accused Suvarna, the applicant cannot be arrested, if appreciated, what can be noticed is, the applicant is the mother of the co-accused Suvarna from whom the contraband was seized.

9. During investigation, it is always open for the investigating agency to find out the source of such contraband and accordingly, if the co-accused Suvarna has named the present applicant as one of the sources of the contraband, it cannot be said that the investigating agency is intended to arrest the applicant without any basis. Such statement of the co-accused Suvarna made during investigation, in my opinion, can always be relied on by the investigating agency. In the case in hand, it is not solely such statement of Suvarna but also the relation of the applicant with the co-accused Suvarna and the seizure of the contraband i.e. *ganja* sufficiently warrant custodial interrogation of the applicant.

10. That being so, no case for grant of bail is made out. Application fails and the same is rejected.

(NITIN W. SAMBRE, J.)

Minal Parab