

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Criminal Application (BA) No. 635 of 2022

Vinod Kumar S/o Ratanlal Soni

Versus

Intelligence Officer, Directorate of Revenue Intelligence (Drive), Nagpur
Regional Unit, Nagpur

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri D.V.Chauhan, Advocate for the applicant.
Shri S.N.Bhattad, for the State / Non-applicant

CORAM : ANIL S. KILOR, J.
DATED : 2nd August, 2022.

The applicant is seeking bail under Section 439 of the Code of Criminal Procedure in Special NDPS Case No.47 of 2019 for the offence punishable under Sections 8C, 20, 28, 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985.

2. Shri Chavan, learned counsel for the applicant submits that, considering the period of incarceration undergone by the applicant i.e. from 11th March, 2019, and the fact that there is no substantive progress in the trial, keeping the applicant in jail for uncertain period will amount to pre-trial punishment.

3. He further submits that, the applicant was present in the truck as a passenger, wherefrom the commercial quantity of contraband i.e. 176.324 kg., was seized but he is no way connected with it.

4. He further submits that there are no criminal antecedents to the discredit of the applicant or there is nothing to show that the applicant is involved in similar offence. It is submitted that this fact is sufficient to show that the applicant is not involved in the alleged offence and hence, there is a reasonable ground to believe that the applicant is not guilty of the alleged offence and if he is released on bail he will not repeat the offence.

5. Shri Chauvan, learned counsel for the applicant has placed reliance on the judgment of Shashikant Prabhu Vs. Rahul Saini and another¹ and submits that the statement under Section 67 of NDPS Act, is inadmissible in Evidence Act.

6. He has further placed reliance on the order dated 7th July, 2022 passed by this Court in Criminal Application (BA) No. 323 of 2022 (*Diwakar Kuttwar Vs. State of Maharashtra*) and submits, that though the commercial quantity was found with the brother of the applicant, in that case and though there were allegations

1 2020 SCC Online Bom 11226

that the contraband was supplied by the applicant, the bail was granted by this Court. He submits that the analogy as applied in the said case may be applied in this case.

7. He further submits that in the present matter except the statement under Section 67 of NDPS Act, there is no incriminating material available on record to connect the applicant with the alleged offence. Accordingly, he prays for grant of bail.

8. On the other hand, learned Additional Public Prosecutor strongly opposed the present application and points out that the present applicant, the driver of the truck and other persons in the truck, were known to each other. It is pointed out that, a huge quantity of contraband was seized from the said truck in which the applicant was travelling at the relevant time.

9. It is pointed out that total weight of the 18 packets was found to be 176.324 kgs valuing Rs.26,44,860/-. He therefore submits that the statement under Section 67 of NDPS Act is not the only basis but other material is available to show the involvement of the applicant in the alleged offence.

10. I have perused the chargesheet and the material placed on record.

11. On 25th June, 2020, the trial Court rejected the application of the applicant for grant of bail and thereafter before filing the present application on 14th June, 2022 i.e. after two years, the trial has commenced.

12. In this case it can be seen that from the truck in which the applicant was traveling, huge quantity of contraband was seized, i.e. 176.325 kgs.

13. As far as the defence of the applicant that, he was travelling as a passenger is concerned, it is a matter of trial. Further even if the statement under Section 67 of NDPS Act is not taken into consideration, other incriminating material is available against the applicant.

14. Thus, the material collected by the Investigating Officer during the investigation does *prima facie* show involvement of the applicant in the alleged offence.

15. In the recent judgment of the Hon'ble the Supreme Court of India in the case of Narcotics Control Bureau Vs. Mohit Aggarwal², the Court has observed thus:

“14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such

conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.

18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”

16. In the light of the observations made by the Hon’ble the Supreme Court of India, the submissions of

the applicant that, the applicant is in jail for more than three years and there is no possibility that the trial will be concluded in near future, cannot be the consideration that can be treated as persuasive ground for granting the relief to the applicant under Section 34 of NDPS Act.

17. In this case the driver and the persons who were travelling in the truck, including the applicant are acquainted to each other. Thus, at this stage the submission of the learned counsel for the applicant that the contraband which was seized, was not seized from the applicant cannot be accepted and it will be a matter of trial.

18. The order granting bail, in the case of Shashikant Prabhu (*supra*) is distinguishable on facts and of no help to the applicant in this case.

19. Hence, considering the evidence collected by the Investigating Officer during the investigation, holistically, there is no reasonable ground for this Court to believe that the applicant is not guilty of the alleged offence.

20. Moreover, this application came to be filed after two years on rejection of application by the trial Court. In the meantime, the trial has commenced which will conclude in near future.

21. In that view of the matter, I am not inclined to grant bail to the applicant. Accordingly, the application is rejected.

[ANIL S. KILOR, J.]

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