

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Application (APL) No. 1139 of 2022

Raju Rakesh Punjilal Gupta
Aged about 48 years,
Occ - Business
R/o Lodhoti P.O.,
Etawa, Tq. Meher,
District Satna

... Applicant

... Versus ...

(1) State of Maharashtra,
Through Police Station Officer,
Police Station Butibori,
Dist. Nagpur.

(2) Jitendra Namdeo Vairagade
Aged about 35 years,
Occ – Service
R/o Local Crime Branch, Bori,
Nagpur Rural, Tq. And Dis. Nagpur

... Non-Applicants/
Respondents

Mr. S. V. Sirpurkar, Advocate for the applicant
Mr. T. A. Mirza, APP for non-applicant 1
None for non-applicant 2

**CORAM : ROHIT B. DEO AND
ANIL L. PANSARE JJ.**

DATED : 22-9-2022

ORAL JUDGMENT (Per : Rohit B. Deo, J.)

Rule. Rule made returnable forthwith. With consent, the application is finally heard.

2. The applicant is arraigned as accused 3 in Special (NDPS) Case 100/2022 which is pending in the Court of learned Special Judge and Additional Sessions Judge-2, Nagpur.

3. This application is preferred by the applicant seeking quashment of First Information Report 410/2021 registered at Police Station, Butibori, District Nagpur and Charge-sheet 39/2022 filed in respect of offences punishable under Sections 20, 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

4. The short submission of the learned counsel for the applicant, Mr. Sirpurkar is that in the entire charge-sheet, there is absolutely no incriminating material against the applicant, and compelling the applicant to face the agony and trauma of trial as a ritualistic formality shall amount to abuse of the process of law.

5. We have heard learned counsel, Mr. Sirpurkar and learned Additional Public Prosecutor, Mr. Mirza and with their assistance, the charge-sheet is perused.

6. Learned Additional Public Prosecutor, Mr. Mirza fairly does not dispute that the only material pressed in service against the applicant is the disclosure by the co-accused, Rohit Jaiswal. It is well

settled that the disclosure by the co-accused is not admissible { ***Tofan Singh Vs. State of Tamil Nadu [2020(12) Scale 519]***}.

7. In as much as there is no incriminating material which could be translated into admissible evidence, we do not find it appropriate to relegate the applicant to the remedy of seeking discharge. The facts are too glaring for us to relegate the applicant to such remedy, which again would be a ritualistic formality.

8. We quash First Information Report 410/2021 and Charge-sheet 39/2022 registered with Police Station, Butibori, District Nagpur to the extent of the applicant.

9. Needless to observe the trial shall proceed against the other accused in accordance with law.

10. Rule is made absolute in the aforestated terms.

(Anil L. Pansare, J.)

(Rohit B. Deo, J.)

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