

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.844 OF 2023

Kumar Baddu Pawar ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Aniket Nikam i/b. Mr. Ashish Satpute, for the Applicant
Smt. Ashwini Takalkar, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.

DATE : OCTOBER 17, 2023

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. On the night intervening 18th and 19th December, 2021 a police team led by the first informant followed two vehicles as they were proceeding in an extremely high speed. Despite signals those vehicles did not halt. Eventually, those vehicles were intercepted. Two persons who were boarding an Innova car fled away. Another person fled away with Tavera car. Co-accused Sukhdeo Rathod was apprehended from the Innova car. In the search of the car, 623.65 kg. Cannabis (Ganja) was found. He was apprehend. The co-accused Sukhdeo Rathod, named the applicant as one of the persons who fled away along with Sachin Chavan and Anil Rathod.

3. Apprehending arrest, the applicant approached the Court of Sessions, Solapur. By an order dated 14th October, 2022, the learned

Additional Session Judge declined to exercise the discretion in favour of the applicant.

4. I have heard Mr. Aniket Nikam, learned counsel for the applicant, and Smt. Ashwini Takalkar, learned APP for the State.

5. Mr. Nikam, learned counsel for the applicant would urge that the only material against the applicant is the statement of the co-accused and it does not constitute an incriminating circumstance.

6. As against this, the learned APP would urge that the applicant had made good his escape, taking advantage of the situation. The applicant was very much occupant of the car in which commercial quantity of Ganja was being transported. Moreover, there are antecedents of the applicant which indicate that the applicant has been indulging in the offences punishable under NDPS Act. Applicant has also made himself scarce & therefore, a non bailable warrant has been issued against the applicant. The CDR also reveals that the applicant was in contact with the arrested accused. Therefore, the applicant does not deserve exercise of discretion.

7. I have perused the allegations in the first information report. Primarily, the material against the applicant is the statement of the co-accused. However, there is an element of spontaneity in the sense that the prosecution alleges that the applicant and co-accused fled away and upon being questioned, the arrested accused named

the applicant as one of the persons who fled away from the scene of occurrence. In the circumstances, the statement of the co-accused assumes a greater significance than a situation where the co-accused simply names a an absentee supplier or purchaser. Secondly, the CDR do reveal thatn in the proximity of the arrest of the co-accused Sukhdeo Rathod, the applicant had contacted the said accused, on numerous occasions. Thirdly, the antecedents of the applicant prima facie reveal that the applicant had been indulging in the activities proscribed by and punishable under the NDPS Act. The Applicant is also arraigned in C.R. No. 339 of 2020 registered at Bhadrachalan police station, C.R. No. 324 of 2021 registered with Shahupuri police station for the offences punishable under section 20B(ii)(b)8(c) and C.R. No. 800 of 2022 registered with Sangola police station for the offences punishable under section 20 B of the said Act.

8. The situation which thus emerges is that in an offence of this nature, if the statement of a co-accused who is apprehended with a sizeable quantity of contraband articles is held to be inconsequential, the investigating agency would not be able to trace the suppliers. The offences are of a grave nature. They have deliterious effect on the society. Often the syndicates in narcotics work on “need to know” basis. The person who is apprehended with

the contraband often does not know the source of contraband beyond his immediate supplier. If a proper investigation is not carried out, the link would get snapped at the person who is found in possession of the contraband articles. Control over narcotics supply and trade would then be a casualty.

9. In the case at hand, apart from the statement of the co-accused, the antecedents of the applicant prima facie indicate that the applicant has been indulging in the alleged activity. If that be the case, discretion cannot be exercised in favour of the applicant without jeopardising the interest of effective and complete investigation and the larger interest of the society. It is only the custodial interrogation of the applicant that would reveal the source of the contraband articles.

10. For the foregoing reasons, I am not persuaded to exercise the discretion in favour of the accused.

Hence, the following order.

ORDER

1] The application stands rejected.

2] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)