

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2869 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Date: 2023.11.10
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Amar Anantrao Jadhav ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Satyavrat Joshi, a/w Tanvi Tapkire, i/b Shrinath , for the
Applicant.

Smt. Ashwini Takalkar, APP for the State/Respondent.

PSI N. R. Angaj, MIDC Bhosari Police Station, Pimpri
Chinchwad, present.

CORAM: N. J. JAMADAR, J.

DATED: 8th NOVEMBER, 2023

ORDER:-

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

2. This is an application for pre-arrest bail in connection
with CR No.154 of 2023, registered with Bhosari MIDC Police
Station, Pimpri-Chinchwad, for the offences punishable
under Sections 8(c), 20(b)(ii), 20(b) and 29 of the Narcotic
Drugs and Psychotropic Substances Act, 1985, ("NDPS Act").

3. On 16th April, 2023, co-accused Sagar Pawar was found
in possession of ganja weighing 4 kg. 24 gm. Investigation
reveal that the co-accused has procured the said contraband

article from the applicant. Apprehending arrest the applicant approached the Special Court. As the learned Special Judge declined to exercise the discretion, applicant has preferred this application.

4. Mr. Joshi, the learned Counsel for the applicant submitted that apart from the statement of the co-accused there is not other material to connect the applicant with crime. It was submitted that a statement of the co-accused is not a legally admissible piece of evidence and on the strength of such statement the applicant cannot be deprived of his personal liberty.

5. Mr. Joshi placed reliance on an order passed by this Court in the case of *Ajay Vijay Gagde vs. The State of Maharashtra*¹. In the said case, the applicants therein were sought to be roped in on the basis of an alleged extra-judicial confession made by one of the applicants and the statements of the witnesses, who stated that they were aware that the applicants were selling *ganja*. In that backdrop, this Court observed that the submission on behalf of the applicants therein that they were sought to be roped in on the basis of the statements, the admissibility and veracity of which, were

¹ABA/1422/2022.

contestable, appeared to be carry substance. This Court had also referred to the decision in the case of ***Seesh Singh @ Mor*** (supra).

6. It would be contextually relevant to note that the learned Special Judge adverted to the decision of the Supreme Court in the case of ***The State of Haryana vs. Samarth Kumar***², wherein the High Court by placing reliance on the decision of the Supreme Court in the case of ***Tofan Singh vs. State of Tamil Nadu***³ had granted pre-arrest bail to the respondents therein as they had been implicated on the basis of the disclosure statement of the main accused.

7. Disagreeing with the view of the High Court, the Supreme Court set aside the order of grant of pre-arrest bail observing, *inter alia*, as under:

“8. In cases of this nature, the respondents may be able to take advantage of the decision in ***Tofan Singh vs. State of Tamil Nadu (supra)***, perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.

9. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.”

22022 SCC Online SC 2087.
3(2021) 4 SCC 1.

8. Where a person is sought to be roped in on the basis of the statement of the co-accused, the attendant facts and circumstances of the given case assume significance. Invariably, the decision in the matter of grant of pre-arrest bail turns on the peculiar facts of the case and it would be difficult to lay down a cast-iron proposition. In the case at hand, the co-accused were found in possession of huge quantity of contraband article (*ganja*). The applicant was named as the person from whom the co-accused had procured the *ganja*. Moreover, the name of the applicant was disclosed by the co-accused at the time of seizure itself. There is an element of spontaneity.

9. In an offence of this nature, if the statement of 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 deleterious 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.

10. To conclude, 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.

11. I am therefore not persuaded to exercise the discretion in favour of the applicant.

12. Hence the following order:

: O R D E R :

- (i) Application stands rejected.
- (ii) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

[N. J. JAMADAR, J.]