

SANTOSH
SUBHASH
KULKARNI

Santosh

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

Digitally signed by
SANTOSH
SUBHASH
KULKARNI
Date: 2023.11.10
10:09:34 +0530

ANTICIPATORY BAIL APPLICATION NO. 3112 OF 2023

Shankar Anmol Karalekar ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Mithilesh Mishra, a/w Raju Mate and Shrinath Mate, for
the Applicant.

Mr. M. G. Patil, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.

DATED: 6th 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.138 of 2023, registered with Khadki Police
Station, Pune, for the offences punishable under Sections
20(b)(ii) and 8(c) of the Narcotic Drugs and Psychotropic
Substances Act, 1985, ("NDPS Act").

3. On 6th May, 2023, while the Khadki police were on a
patrolling duty, pursuant to an intimation a trap was laid.
Co-accused Navin Pille and Jitendra Multani were found with
two travel bags. Co-accused were intimated about their right

to be searched in the presence of the Magistrate or Gazetted Officer. Thereafter search was conducted in which 22 kilo and 700 gram *ganja* was found concealed in those travel bags.

4. Investigation commenced, during the course of investigation, co-accused Jitendra Multani made a disclosure that he had procured the said *ganja* from the applicant.

5. Apprehending arrest, the applicant approached the Special Court. By an order dated 15th June, 2023, the Special Court declined to exercise the discretion in favour of the applicant.

6. Mr. Mishra, the learned Counsel for the applicant, submitted that except the statement of the co-accused that the contraband article was procured from the applicant, there is no material to connect the applicant with the 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.

7. The learned Counsel for the applicant placed reliance on the order of the Supreme Court in the case of ***Seesh Singh***

@ *Mor vs. State of Punjab*¹, wherein the Supreme Court had granted pre-arrest bail noting that the appellant therein was bailed out in another matter and it was only through the statement of the co-accused that involvement of the appellant was sought to be made out. Attention of the Court was also invited to an order passed by the Supreme Court in the case of *Vijay Singh vs. The State of Haryana*², wherein the Supreme Court had directed the release of the petitioner therein as he was named by the co-accused.

8. Mr. Mishra sought to place reliance on an order passed by this Court in the case of *Ajay Vijay Gagde vs. The State of Maharashtra*³. 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 contestable, appeared to be carry substance. This Court had

1Cri.Appeal Nos.822/2020.

2SLP (Cri) No(s).1266/2023.

3ABA/1422/2022.

also referred to the decision in the case of ***Seesh Singh @ Mor*** (supra).

9. 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***⁴, 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***⁵ 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.

10. 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.”

11. Where a person is sought to be roped in on the basis of the statement of the co-accused, the attendant facts and

42022 SCC Online SC 2087.

5(2021) 4 SCC 1.

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*. It is true, the investigating agency has not alleged that there are antecedents of the applicant. However, the nature of the offences and the quantity of the contraband article found in the possession of the co-accused cannot be lost sight of.

12. 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.

13. 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.

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

15. 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.]