

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

CRIMINAL APPLICATION (BA) NO. 74/2023

Surajpal Dharmasingh Thakur Vs. State of Maharashtra through Sub Inspector,
Railway Police Force, Railway Police Station, Nagpur.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. N. Nandeshwar, Advocate for applicant.
Mr. A. M. Kadukar, A.P.P. for non applicant -State.

CORAM : ANIL L. PANSARE, J.
DATE : FEBRUARY 22, 2023.

This is an application under Section 439 of the Code of Criminal Procedure, 1973 (For short 'The Code'). The applicant was arrested on 04.07.2022 in Crime No.471/2022 registered with Railway Police Station, Nagpur for an offence punishable under Sections 20(b)(ii)(c) and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (For short 'The NDPS Act').

2. Briefly stated, the case of the prosecution is that on 04.07.2022, railway staff was checking coach No.S-4 of Vishakhapatnam – New Delhi train. According to the police officials, a lady and three persons were possessing trolley bags, having smell of Ganja. These four persons were made to alight the train at Nagpur. Three trolley bags and two backpack bags were checked. The bags contained 47.688 Kg. moist Ganja. First Information Report came to be registered against these four persons.

2. It is the case of the applicant that he was travelling from Vishakhapatnam to Delhi and was simply a passenger. He does not know other three passengers. He did not possess any bag. As against, the case of prosecution is that the applicant possessed one trolley bag. The bag was opened. It contained Ganja weighing 11.649 Kg.

3. Thus, according to the prosecution, the applicant was in conscious possession of trolley bag containing Ganja weighing 11.649 Kg. Learned A.P.P. relied on judgment in State of Punjab Vs. Ram Pal, reported in (SC) Law Finder Doc Id #186627. The Apex Court in paragraph nos. 6 to 8 has held thus:

“6. As noted in **Gunwantlal v. State of M.P.** possession in a given case need not be physical possession but can be constructive, having power and control over the article in the case in question, while the person to whom physical possession is given holds it subject to that power or control.

7. ...

8. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Art gives a statutory recognition of his position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.”

4. Thus, it is held that the possession of the contraband need not be physical but can be constructive having power and control over the Ganja. The prosecution is, therefore, duty-

bound to firstly prove that the applicant was in possession of the bag and, in turn, Ganja. The possession may be constructive having power and control over the bag/Ganja. However, in the present case, there is absolutely nothing in the entire charge-sheet except for the statements of the raiding party members that the applicant was in possession of the bag. It is not the case of the prosecution that the bag contained any other article belonging to the applicant. According to the prosecution itself, four persons were sitting in S-4 coach. It is not the case of prosecution that each passenger was holding a bag(s). The experience shows that the bags are kept in the trains below the seats and that therefore to attribute conscious possession, the prosecution will have to lead cogent evidence to show that the applicant was indeed in possession of a particular bag. Learned A.P.P. could not lay hands on any such evidence. Mere statement, therefore, that the applicant was holding possession of trolley bag will not be sufficient.

5. That apart, even if the case of the prosecution is to be believed, the applicant was in possession of 11.649 Kg. of Ganja which is intermediate quantity. Therefore, bar under Section 37 of the NDPS Act, will not attract. The applicant is behind the bars since 04.07.2022. Charge-sheet has been filed on 31.12.2022. Charge is not yet framed. It will take time to commence and conclude the trial. On inquiry, learned counsel for the applicant submits that there are no criminal antecedents against the applicant. The applicant is resident of Haryana. In view of above and considering the nature of evidence against the applicant, no fruitful purpose will be served by keeping the

applicant behind the bars. Learned A.P.P. submits that the applicant may abscond. This apprehension can be dealt with by putting the applicant to appropriate terms. The applicant, therefore, is entitled for the relief.

6. The observations made in this order are prima facie and are made for deciding the present application only.

7. Resultantly, following order is passed.

ORDER

(i) The application is allowed.

(ii) Applicant – Surajpal Dharamsingh Thakur, be released on bail in Crime No.471/2022 registered with Railway Police Station, Nagpur for an offence punishable under Sections 20(b) ii (c) and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985, on he executing PR. Bond in the sum of Rs.25,000/- with cash surety in the like amount.

(iii) The applicant shall furnish one surety in the amount of Rs.25,000/- within one month from today.

(iv) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the mobile number and the residence till the final disposal of the case.

(v) The applicant shall attend the trial Court on each and every date.

(vi) The applicant shall furnish affidavit of two close relatives taking responsibility of applicant's attending the trial on each and every date.

(vii) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(viii) The applicant shall maintain law and order.

(ix) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

(Anil L. Pansare, J.)

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