

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

CRIMINAL APPLICATION (BA) NO.174/2023

Prit s/o Balvirsingh Arora

..VS..

**State of Maharashtra, through PSO PS Yashodhara Nagar, Nagpur, District
Nagpur.**

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

Court's or Judge's Order

.....
Shri R.M.Patwardhan, Counsel for the Applicant.
Shri S.M.Ghodeswar, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 07/06/2023

PRONOUNCED ON : 12/06/2023

1. The present application under Section 439 of the Code of Criminal Procedure is filed by the applicant for grant of bail in connection with Crime No.341/2022 registered with Yashodhara Police Station, Nagpur for offences punishable 8(c), 20(B)(2)(C), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the said Act).

2. The applicant is arrested on 5.9.2022 and since then he is in jail.

3. The crime is registered on the basis of report lodged by Police Head Constable Parmeshwar Kadu on allegations that on 31.5.2022 he along with other officials was called by his superior officer Manoj Sidam and disclosed that

he has received a secret information that one person by name Aalam along with his associates is coming at Yashodhara Nagar, Lane No.4, near the house of Shalini Pancham along with psychotropic substance like "Ganja". Accordingly, they proceeded towards the spot. At about 8:45 pm, one person came on two-wheeler along with two persons. They were carrying two bags. They stopped their vehicle near the house of Shalini Pancham. Immediately, raiding party members attempted to catch them. However, two persons fled away and co-accused namely Mohd.Dilshat s/o Mohd.Safar Ansari was caught. He was arrested. By following all mandatory provisions, the ganja to the extent of 15 kilograms worth of Rs.2,25,000/- was seized. On the basis of the said report, the crime was registered. During investigation, name of the present applicant is revealed and he is arrested.

4. As per the contention of the applicant, he is arrested merely on the basis of statement of the co-accused and nothing is recovered from him. Co-accused Mohd.Dilshat s/o Mohd.Safar Ansari has disclosed the name of the applicant. Except the disclosure statement, no other material is before the investigating officer to connect the applicant with the alleged offence. Now the investigation is completed and

the chargesheet is filed and, therefore, the applicant be released on bail.

5. The said application is strongly opposed by the State on the ground that the applicant is habitual offender. The quantity seized from the co-accused is of a commercial in nature. The applicant is a prime accused who brought the same substance from Orissa to Maharashtra. There is sufficient material to connect the applicant with the alleged offence and, therefore, the bail application deserves to be rejected.

6. Heard learned counsel Shri R.M.Patwardhan for the applicant and learned Additional Public Prosecutor Shri S.M.Ghodeswar for the State.

7. Learned counsel Shri R.M.Patwardhan for the applicant submitted that except the disclosure statement of the co-accused, no other material is on record to show the involvement of the applicant. Nothing is recovered from the applicant. The mobile phone of the applicant is already seized. Hence, the application deserves to be allowed by releasing the applicant on bail. In support of his contentions, he placed reliance on the decision of the Honourable Apex

Court in the case of on **Bharat Chaudhary vs. Union of India**, reported in 2021 SCC OnLine SC 1235 wherein it is held that in absence of any psychotropic substance found in the conscious possession of accused, it is appropriate to release him on bail. He submitted that in the present case also nothing is recovered from the applicant. The ratio laid down in the case *supra* is applicable in the present case also.

8. *Per contra*, learned Additional Public Prosecutor Shri S.M.Ghodeswar for the State submitted that the applicant is the prime accused who brought the said psychotropic substance from Orissa State. During investigation, statement of the witnesses are recorded by the investigating officer. The statement of Kailash Patil shows that the police have caught Aalam. Out of two persons, who fled away, one is the applicant and the name of the applicant is disclosed by the co-accused in his presence. The statement of Shakeel Ahmed shows that the applicant communicated with him and disclosed that he is in possession of the psychotropic substance and asked him to purchase the same from him. Thus, the statements recorded are sufficient to show the involvement of the applicant in the alleged offence. If the applicant is released on bail, there is every likelihood of

committing similar type of offence. In support of his contentions, he placed reliance on the decision of the Honourable Apex Court in the case of **Union of India vs. Ajay Kumar Singh @ Pappu, decided on 28.3.2023** dealt with Section 37(1) and held that in view of the provisions, no person accused of an offence involving trade in commercial quantity of narcotic is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail. It is further observed by the Honourable Apex Court that in absence of recording of such satisfaction by the court, we are of opinion that the High Court manifestly erred in enlarging the respondent accused on bail and set aside the order of bail. He submitted that since the relevant statements are sufficient to show the involvement in the crime, applicant is not entitled for grant of bail.

9. Having heard both the sides and perused the record available before me. Perusal of investigation papers shows that besides the disclosure statements by co-accused Aalam, the statements of the witnesses show the involvement of the applicant in the alleged offence. Admittedly, the

statements under Section 161 of the Code of Criminal Procedure may not be admissible in evidence. However, the Honourable Apex Court observed in the case of **Indresh Kumar vs. The State of Uttar Pradesh, reported in 2022 (SC) LiveLaw 610** that these statements are relevant in considering *prima facie* against an accused in an application for grant of bail in case of grave offence. Admittedly, the commercial quantity is recovered from the applicant. While considering the application for bail, this court has to record satisfaction on the basis of the reasonable grounds that the accused is not guilty of such offence. Thus, the court must be satisfied that the accused person is unlikely to commit any offence while on bail. The Honourable Apex Court in the case of **Narcotics Control Bureau vs. Mohit Aggarwal, reported in 2022 LiveLaw (SC) 613** held that the expression "reasonable grounds" used in Section 37(1)(b) of the NDPS Act would mean credible and plausible grounds for the court to believe that the accused persons are not guilty of the alleged offence. The provisions of Section 37 of the NDPS Act read as follows:

"37. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

10. Thus, it is evident from a plain reading of the non-obstante clause inserted in sub-section (1) that in view of sub-section (2) of Section 37 of the NDPS Act, there are certain limitations placed on power of the court while granting bail to a person accused of having committed an offence under the NDPS Act. The conditions imposed in sub-section (1) of Section 37 of the NDPS Act are that (i) the public prosecutor ought to be given an opportunity to oppose the application and (ii) if such an application is opposed, the court must be satisfied that there are reasonable grounds for believing that the accused persons are not guilty of such an

offence. Additionally, the court must be satisfied that the accused person is unlikely to commit any offence while on bail.

11. The Honourable Apex Court in the case of **Collector of Customs, New Delhi vs. Ahmadalieva Nodira**, reported in **(2004)3 SCC 549** determined the expression "reasonable grounds" and held that the expression "reasonable grounds" means something more than *prima facie* ground. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

12. The Honourable Apex in the case of **State of Kerala vs. Rajesh and others** reported in **(2020) 12 SCC 122** has observed that the expression "reasonable grounds" means something more than *prima facie* grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offences. The reasonable belief contemplated in the provisions requires existence of such

facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

13. In the light of the above observed principles, if the statements of the witnesses are perused, the same show the involvement of the applicant. There is no substantial probable cause to believe that the accused is not guilty of the alleged offence. On the contrary, there are grounds to believe that the accused is involved in the said crime. There is no reason to believe that if the accused is released on bail, he will not commit any offence while on bail. Thus, the facts and circumstances are not on record to believe that the applicant would not have committed such an offence and, therefore, the application deserves to be rejected and the same is rejected.

With this criminal application stands disposed of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!