

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

**CRIMINAL APPLICATION (BA) NO.570/2023
Chandabai Pocham Zade**

..VS..

State of Mah., thr.PSO PS Ballarpur, District Chandrapur

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

Court's or Judge's Order

.....
Shri C.B.Barve, Counsel for the Applicant.
Shri M.J.Khan, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 27/07/2023

1. By this application, being moved under Section 439 of the Code of Criminal Procedure, the applicant seeks regular bail in connection with Crime No.646/2021 registered with the non-applicant police station for offences punishable under Sections 8(c), 20(b), and 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act).

2. The applicant is arrested on 6.6.2021 and since then she is in jail.

3. The crime is registered on the basis of report lodged by Assistant Police Inspector Vikas Ramkumar Gaikwad. As per the complainant, he received a secret information and laid a trap near Prince Dhaba, Bamhani T-Point, on Rajura Road and four wheeler, in which the applicant and two co-accused were travelling, was intercepted. The vehicle was searched and

"Ganja" weighing 25.144 kilograms was recovered which is more than of commercial quantity. After following the mandatory provisions, the applicant was arrested.

4. As per contentions of the applicant, the contraband article was not seized from her physical possession. However, the same was seized from the vehicle in which she was travelling. In fact, she was proceeding to Chandrapur as she had been to Begampalli and on the way, the vehicle was intercepted merely on suspicion. Now, investigation is completed and chargesheet is filed. The applicant is 56-year-old and suffering from various ailments. Now, she has spent sufficient time behind the bars and further incarceration is not required. The other two co-accused are already released on bail and, therefore, she is also entitled to be released on bail on the ground of parity.

5. The application is strongly opposed by the State on the ground that on the basis of the secret information, the trap was laid. The applicant was found to be in her possession of "Ganja" weighing around 25.144 kilograms. The vehicle was also seized. During investigation, it revealed that there are criminal antecedents against the applicant and her earlier bail application bearing No.1119/2021 is rejected by this court as

well as special leave petition against the said order is also dismissed. There is no change in circumstance. As such, the application deserves to be rejected.

6. Heard learned counsel Shri C.B.Barve for the applicant and learned Additional Public Prosecutor Shri M.J.Khan for the State.

7. Learned counsel for the applicant submitted that the applicant was a passenger in the said vehicle. She had been to Begampalli and while she was on the way to Chandrapur, the vehicle was intercepted. In fact, she had no knowledge that in the said vehicle the "Ganja" was being transported.

8. *Per contra*, learned Additional Public Prosecutor for the State submitted that there is no change in circumstance as earlier bail application was rejected after filing of the chargesheet. The Honourable Apex Court has also not considered her prayer for bail. There are criminal antecedents against her. The applicant was found to be in her possession of "Ganja". The application deserves to be rejected.

9. It is apparent from the record that initially after filing of the chargesheet, the applicant has preferred the bail application which was rejected by this court while passing order

on 8.12.2021 in Criminal Application No.1119/2021 observing that scrutiny of chargesheet reveals that the applicant is a habitual offender and several offences under the Prohibition Act are registered. Her contention, that she had gone to Begampalli, is *prima facie* incredible. Against the said order, the applicant has preferred Special Leave Petition No.456/2022 before the Honourable Apex Court. While passing order on 1.2.2022, the Honourable Apex Court held that on carefully perusing material placed on record, we see no reason to interfere with the impugned order passed by the High Court and the special leave petition is dismissed.

10. Now, the present application is filed by the applicant on the ground that the other two co-accused, against whom the similar allegations are levelled, are released on bail. As such, she be released on bail.

11. Perusal of the investigation papers, reveals that the applicant along with the other two co-accused found to be in her possession of 25.144 kilograms of "Ganja" being transported in the said vehicle. Scrutiny of the chargesheet, *prima facie* case is made out against the applicant. In view of Section 50 of the NDPS Act, relevant notice was given to the applicant and due search was taken. It further reveals from the chargesheet that

the applicant is a habitual offender in the sense that several offences are registered against her under the Prohibition Act. Besides the limitation under Section 439 of the Code of Criminal Procedure, limitations are placed by Section 37 of the NDPS Act which commence *non obstante* clause. The first condition in view of Section 37 of the NDPS Act is that the prosecution must be given an opportunity to oppose application and the second is that court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions are not satisfied, the ban for granting bail operates. The expression 'reasonable grounds' means something more than *prima facie* grounds. It contemplates substantial probable causes for believing that accused is not guilty of alleged offence. The reasonable belief contemplated in the provisions requires existence in such facts and circumstances as are sufficient in themselves to justify the satisfaction accused is not guilty of alleged offence.

12. Having gone through the entire chargesheet, involvement of the applicant reveals that the contraband article "Ganja" is recovered from the vehicle in which the applicant was travelling. It further reveals that several offences are registered against the applicant which shows that she is a habitual offender. This court has considered this aspect in her earlier

bail application bearing No.1119/2021 and the Honourable Apex Court declined to interfere with the said order. As far as the ground of parity is concerned, no criminal antecedent is reported against the co-accused and the trial court has released the other co-accused on bail. As far as the applicant is concerned, in view of Section 37 of the NDPS Act, no reasonable ground is made out to show that the applicant is not guilty of the alleged offence. There is no change in circumstance.

13. In this view of the matter, the application deserves to be rejected and the same is rejected and **disposed** of as such.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!