



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

CRIMINAL APPLICATION (BA) NO.670 OF 2023
Ajay S/o Hagruji Rahulkar Vs. State of Maharashtra

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

Court's or Judge's orders.

Shri R.M. Daga, Advocate for applicant.
Mrs. M.A. Barabde, APP for non-applicant/State.

CORAM : M.W. CHANDWANI, J.
DATE : OCTOBER 05, 2023.

The applicant is seeking bail in connection with Crime No.104/2022 registered with Police Station, Duggipar, District Gondia for the offence punishable under Sections 8(C), 20(C), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. Heard learned counsel for the applicant as well as learned APP for the non-applicant/State. I have perused the record.

3. The prosecution allegation is that on 12.05.2022, upon receipt of secret information, the police officials of Duggipar Police Station intercepted Hyundai Verna and Honda City coming towards Gondia from Deori. On search, Hyundai Verna registration no.MH04W5333 and Honda City registration no.CG04ZX7755, they seized contraband ganja of 28 kg 50 gm worth Rs.3,36,600/-. Therefore, the aforesaid offences came to be registered against the

applicant and co-accused. The applicant was traveling in the Hyundai Verna car.

4. It is contended on behalf of the learned counsel for the applicant that the applicant has been in jail, since last more than one year. One of the co-accused, who was driving the vehicle has already been released on bail by the learned Additional Sessions Judge, however, the learned Judge did not consider the ground of parity. It is also one of the grounds that the applicant was traveling in Hyundai Verna car, wherefrom the contraband ganja weighing 17.450 kg came to be recovered. The individually aforesaid recovery from Hyundai Verna car is less than the commercial quantity of 20 kg. Therefore, according to him, section 37 of the NDPS Act will not come in the way of granting bail.

5. Per contra, learned APP for the non-applicant / State vehemently submits that the other co-accused, who was released on bail, was the driver of the vehicle unconnected with the crime and was hired by one Arun Chaure whereas the seized contraband article belongs to the applicant. Therefore, no ground for parity has been made out. According to her, contraband of 28 kg 50 gm has been seized from the Hyundai Verna and Honda City vehicles, which is of a commercial quantity, therefore, in view of section 37 of the NDPS Act it cannot be said that no offence has been committed by the applicant. Therefore, the applicant is not entitled for bail.

6. Perusal of charge-sheet shows that the applicant was traveling in the Hundai Verna vehicle wherefrom contraband ganja of the quantity 17.450 kg has been recovered. No doubt collectively quantity of 28 kg 50 gm of ganja came to be recovered from both of the vehicles. However, individually the ganja intermediate quantity came to be recovered from the Verna car wherein the applicant was traveling. It is relevant to mention here the decision of Hon'ble Apex Court in the case of ***Amarsingh Ramjibhai Barot Vs. State of Gujarat [(2005) ALL MR (Cri) 229 (S.C.)]***, wherein in para no. 8 of the decision it is held as under:

“8. Although, at first blush, the argument of the learned counsel appeared attractive, on careful appreciation of the facts on record we are satisfied that the High Court judgment is fully justified and needs to be upheld. It is true that the High Court proceeded on the footing that there was a criminal conspiracy between the appellant and the deceased, Danabhai Virabhai Rabari. In our view, however, there was no warrant for this conclusion at all as there is no evidence to suggest that there was any such abetment and/or criminal conspiracy within the meaning of Section 29 of the NDPS Act. The appellant and Danabhai Virabhai Rabari were found together, but individually carrying the recovered substances. Hence, it was not possible for the High Court to take the view that Section 29 was attracted.”

7. Considering the above legal position, the quantity of ganja recovered from Hyundai Verna vehicle, individually is not of commercial quantity, therefore bar under Section 37 of the NDPS Act will not be applicable. Apart from the fact that the investigation is over and charge-sheet has already been filed. The applicant is behind bars since 13.05.2022.

8. Considering the above material, in my view, discretion can be exercised in favour of the applicant on certain conditions. Accordingly, I proceed to pass the following order:

ORDER

- i. The application is allowed.
- ii. The applicant - Ajay S/o Hagruji Rahulkar, be released on bail in connection with Crime No.104/2022 registered with Police Station, Duggipar, District Gondia for the offence punishable under Sections 8(C), 20(C), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on furnishing PR bond in the sum of Rs.50,000/- with one solvent surety in the like amount.
- iii. The applicant shall not induce, threaten, or promise any witness, who are connected with the alleged crime.
- iv. The applicant shall not indulged himself in the similar type of offence.

The application is disposed of.

JUDGE

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