



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

**CRIMINAL APPLICATION (ABA) NO.611 OF 2023**

Dipak s/o Baburao Kurhe

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Karanja  
(Ghadge), Tq. Karanja (Ghadge), District Wardha

---

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

Court's or Judge's orders

---

Mr. J. B. Kasat, Advocate for applicant.  
Mrs. M. A. Barabde, APP for respondent/State.

**CORAM : URMILA JOSHI-PHALKE, J.**

**RESERVED ON : 29.11.2023**

**PRONOUNCED ON : 04.12.2023**

1. By this application, the applicant is seeking anticipatory bail in respect of Crime No.327/2022, registered with Karanja (Ghadge) Police Station, Taluka Karanja (Ghadge), District Wardha for the offences punishable under Section 20, 29 and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (N.D.P.S. Act).

2. The applicant is apprehending his arrest at the hands of Police as crime is registered on the basis of report lodged by Punam Keshav Giradkar, Police Officer attached to the Police Station Karanja (Ghadge). As per the allegations, on 02.09.2022 when she was present in the Police Station, she received an information from PSI Mahendra Ingle that he received secret information that

Car bearing No. MH-31-CR-8527 proceeding from Nagpur to Amravati is transporting contraband articles ganja. Immediately, she along with the raiding party members proceeded to restrain the vehicle by conducting the raid. They have restrained the vehicle and during the search of the vehicle co-accused Kayyum Shaha Shahansha and Sharad Balu Gawande were found proceeding in the said Car. On due search of the Car, one packet of contraband article namely ganja worth of Rs.30,05,250/- was found. After following due process, the police have seized said ganja and arrested the co-accused namely, Kayyum Shaha and Sharad Balu Gawande. During investigation, these accused disclosed that said contraband article is obtained by them from the present applicant – Dipak Baburao Kurhe. On the basis of confessional statement of co-accused, the applicant is also arraigned as an accused and, therefore, he is apprehending his arrest and applied for grant of bail in the event of his arrest.

3. As per contentions of the applicant, except the confessional statement of co-accused, there is no other material against him to show that the seized article belongs to him. His custodial interrogation is not required, as the incriminating articles are already seized.

4. Learned APP Mrs. M. A. Barabde for the State strongly opposed the application on the ground that

custodial interrogation is required as the necessary investigation about the fact that from which place the applicant obtained the said contraband articles, requires to be investigated. It is further submitted by the learned APP that during investigation it reveals that the present applicant has obtained the said contraband article from Orissa State, therefore, the link of the present applicant with the contraband article requires to be established. If the applicant is released on anticipatory bail, there is every likelihood that he would commit the similar type of the offence and will tamper the prosecution evidence.

5. Heard learned Counsel Mr. Kasat for the applicant. He submitted that except the statement of the co-accused, no material on record to connect the present applicant with the alleged offence. He submitted that confessional statement recorded under Section 67 of the NDPS Act has been held to be inadmissible in the trial of an offence under the NDPS Act. He further submitted that in absence of any psychotropic substance found in the conscious possession of the present applicant, implicating him in the alleged offence is not sustainable. As confessional statement of the co-accused is not admissible in the evidence, on the basis of which, the applicant is dragged into the present crime, therefore, he deserves to be released on bail. He further submitted that the applicant will abide by all the conditions

imposed by this Court and prays for releasing him on bail.

6. Per contra, learned APP Mrs. M. A. Barbade for the State submitted that the statement of the co-accused and during investigation it reveals that the present applicant has obtained said contraband article from Orissa. His custodial interrogation is required and the application deserves to be rejected.

7. In view of the submissions made by the learned Counsel for the applicant, I have perused the entire investigation papers. It reveals from the investigation papers that police from Karanja (Ghadge) Police Station received the secret the information and they have conducted the raid by restraining the vehicle wherein co-accused Kayyum Shaha Shahansha and Sharad Balu Gawande were travelling. The Car bearing MH-31-CR-8527 was searched and contraband article ganja worth of Rs.3,50,002/- was found. During the inquiry with the arrested persons, involvement of the present applicant revealed. The confessional statement of the co-accused shows that they have obtained the said contraband article from the present applicant who is resident of Dhule.

8. As per reply filed by the learned APP, during investigation it reveals that present applicant has

obtained the said contraband article from Orissa State and the co-accused obtained the same from the present applicant. It is submitted by the learned APP that for interrogation the physical custody of the applicant is required, as during investigation it reveals that present applicant travelled up to Orissa State and obtained the said contraband article.

9. There is no dispute that the Hon'ble Apex Court in **Tofan Singh vs. State of Tamil Nadu**, reported in **(2021) 4 SCC 1** has adjudicated the issue whether statement recorded under Section 67 of the NDPS Act can be used as confessional statement in the trial for an offence under the NDPS Act and observed that it refers only to the power to call for information etc.. The issue regarding whether the applicant can take advantage of the decision of in the case of **Tofan Singh Vs. State of Tamil Nadu** seeking anticipatory bail, the Hon'ble Apex Court in the case of the **State of Haryana Vs. Samarth Kumar**, reported in **2022 LiveLaw (SC) 622** held that the respondent may be able to take advantage of the decision in the case of **Tofan Singh vs. State of Tamil Nadu**, perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial. To grant anticipatory bail in a case of this nature is not really warranted. In this cited case also the facts were that no recovery was effected

form the accused and he has been implicated on the basis of disclosure statement.

10. In view of the above observations by the Hon'ble Apex Court, in the present case also, the involvement of the present applicant revealed on the basis of disclosure statement. The Hon'ble Apex Court has held that the respondent may be able to take advantage of the said decisions perhaps at the time of arguing regular bail application or at the time of final hearing after conclusion of the trial and accordingly rejected the application. There is no reason for this Court also to take a different view. In view of the above observations of the Hon'ble Apex Court, the Criminal Bail Application deserves to be rejected and the same is rejected.

11. The Criminal Application stands disposed of.

**(URMILA JOSHI-PHALKE, J.)**