



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

CRIMINAL APPLICATION (BA) NO.1019 OF 2023
(Bipin Kumar Das s/o Gopal Das Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.K. Bhangde, Advocate for the applicant.
Ms M.A. Barabde, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- DECEMBER 20, 2023.

Heard.

2. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.734/2022, registered with Police Station GRP railway, Nagpur for the offence punishable under Section 20(b)(ii)(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short NDPS Act).

3. The applicant is arrested on 27/09/2022. Since then he is behind bar.

4. As per the accusation against the present applicant is that the Police Personnel of the Reserve Police Force (RPF) were travelling in Tirupati-Jammutavi Hamsafar Express. When the train reached at Nagpur, the Police of RPF found that four co-accused, who were travelling in Coach B/1, were possessing Ganja (Marijuana) weighing 85.570 kgs. Therefore, all the four co-accused were taken into possession and after necessary

formalities they were arrested. On inquiry with them, it revealed to the investigating agency that the present applicant and the other co-accused obtained the said contraband from one unknown woman and they were travelling in the same train in Coach B/12. Subsequently, the present applicant was arrested and the charge-sheet is filed.

5. Learned Counsel for the applicant submitted that the except the statement of the co-accused no material is collected during the investigation to show that the present applicant is dealing with the contraband articles and obtained the contraband articles from one unknown woman. Nothing is seized from the present applicant. The co-accused Ganesh s/o Satahu Sahni against whom the similar allegations are leveled is already released on bail by this Court. He further submitted that considering nothing is recovered from the present applicant, the applicant is also not travelling along with the other co-accused and mere statement of the co-accused is not sufficient to show the involvement of the present applicant in the alleged offence. He was travelling separately in another coach. Now, for a sufficient period, he is behind bar. Considering the same, he be released on bail.

6. In support of his contention, he placed reliance on *Tofan Singh v/s State of Tamil Nadu [(2021) 4 SCC 1]* and the order passed by this Court in *Criminal Application No.713/2023 dated 04/12/2023*.

7. *Per contra*, learned Additional Public Prosecutor strongly opposed the application on the ground that the reservation chart and the statement of the accused sufficiently shows the involvement of the present applicant along with the co-accused. Though investigation is completed and charge-sheet is filed, if applicant is released on bail there is every likelihood that he would commit similar type of the offence and prays for rejection of the bail.

8. After hearing both the sides and on perusal of the investigation papers, admittedly, except the statement of the co-accused nothing in on record to show that the present applicant has obtained the contraband article from one unknown woman. Moreover, the applicant was travelling separately in another coach. Nothing is seized from the present applicant. At this stage, it would not be appropriate to record a finding whether the applicant is guilty for the offence or not. The Hon'ble Apex Court in the case of Tofan Singh (supra) wherein it is held that the statement recorded under Section 67 of the NDPS Act indicates that it refers only to the power to "call of information" etc. It is further held by the Apex Court that the said statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement of the accused and the accused are released on bail.

9. In another decision ***State (By NCB) Bengaluru V/s Pallulabid Ahmad Arimutta and anr, reported in (2022) 12 SCC 633*** wherein also by referring

the judgment of Tofan Singh (supra) the Hon'ble Apex Court held that confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act.

10. In the light of the above observation and considering that except the confessional statement, no other material is on record to connect the present applicant with the alleged offence. The application of the present applicant for grant of bail deserves to be allowed. In view of that I proceed to pass the following order :

- (i) The application is allowed.
- (ii) The applicant – Bipin Kumar Das s/o Gopal Das in connection with Crime No.734/2022, registered with Police Station GRP railway, Nagpur for the offence punishable under Section 20(b)(ii)(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one surety in the like amount.
- (iii) The applicant shall furnish local surety and shall attend the trial Court regularly.
- (iv) The applicant shall furnish his Cell phone number and address with address proof before the Investigating Officer.

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

11. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*