



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

CRIMINAL APPLICATION (BA) NO.1043/2023
Baburao s/o Veeraswami Kamapti

..VS..

State of Mah., thr.PSO Pardi, Nagpur, Taluka and District Nagpur

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

Court's or Judge's Order

.....
Shri Anil S.Mardikar, Senior Counsel assisted by Shri
D.P.Singh, Advocate for the Applicant.
Shri H.Futane, Additional Public Prosecutor for the NA/State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 05/12/2023
PRONOUNCED ON : 11/12/2023

1. Heard.
2. By this application, the applicant is seeking bail in connection with Crime No.383/2022 registered with the non-applicant/police station for offences punishable under Sections 8(c); 20(b)(ii), and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the said Act).
3. The applicant is arrested on 21.11.2022 and since then he is in jail.
4. As per accusations against the applicant, on 15.11.2022, complainant Assistant Police Inspector Arun Bakal was informed by Police Inspector of Crime Branch

regarding a secret information relating to transportation of contraband through truck bearing registration No.AP-16-TA-7349. The said contraband was being transported from Jagdalpur (C.G.) to Bhandara via Nagpur. Accordingly, the complainant along with police officials and panchas rushed to Pardi Chowk, Bhandara Road, near Jaibhole Dhaba Kapsi to restrain the vehicle. The complainant and the raiding staff restrained the said vehicle and inspected goods loaded in the truck. There were certain bags of fertilizers and beneath the said bags, 72 bags were found containing 1555 kilograms 320 grams "ganja" which was seized by the police in presence of panchas. During personal search of co-accused Someshwarrao @ Bujji Narsimhamurti Kotipillayam and co-accused Balemnanaji @ Nani Paidyakapu Balem, two mobile phones were seized and one piece of paper having names of 5-7 persons and their contact numbers. The articles were forwarded for chemical analysis. After obtaining the samples, by following due procedure, First Information Report was lodged. As per allegations, investigating agency found contact number of the applicant over the said piece of paper seized from accused Nos.1 and 2. It is further alleged that some money transactions were exchanged between the applicant

and co-accused No.3 Subhash Tukaram Pandule, accused No.4 Ambadas Sanje, accused No.5 Sheikh Rambabu @ Roshan Sheikh, and accused No.10 Yelluri Shrinu @ Yelluri Arun.

5. Learned Senior Counsel Shri Anil S.Mardikar for the applicant, submitted the applicant is neither owner of the truck nor there is any nexus with the said transaction of the contraband. Except statement of son of the applicant showing that on the say of the applicant he transferred some amount to co-accused namely Sheikh Rambabu, Subhash Pandule, and Ambadas Sanje, nothing is on record to show the connection of the applicant with the alleged offence. The applicant is arrested merely on the basis of statement of the co-accused and the transaction took place from phone-pay of the son of the applicant and the other co-accused. He further submitted that now it is well settled that statements of the co-accused showing the involvement of another accused are not admissible.

6. In support of his contentions, learned Senior Counsel Shri Mardikar for the applicant placed reliance on the decision of in the case of Tofan Singh vs. The State of Tamil

Nadu, reported in (2021)4 SCC 1 and the decision of the Gujarat High Court in Criminal Misc.Application NO.1234/2022 (Yash Jayeshbhai Champaklal Shah vs. State of Gujarat) decided on 2.3.2022 and submitted that on the basis of screen-shot of phone-pay, the applicant cannot be implicated as an accused on presumption that the transactions made by the applicant with the co-accused are against the said contraband article. He submitted that in the decision of the Gujarat High Court *supra* it has been held that such type of material cannot be treated to be sufficient material to establish live-link between the co-accused and the accused whose bail applications were under consideration.

7. Learned Additional Public Prosecutor Shri H.Futane for the State, strongly opposed the application on the ground that commercial quantity of the contraband article was found in possession of the co-accused. The rigors of Section 37 of the said Act are, therefore, applicable. Moreover, the applicant is residing outside the State of Maharashtra and, therefore, there is likelihood that he would not be available for trial which would affect the case of the prosecution and prays for rejection of the application.

8. Having heard learned Senior Counsel Shri Anil S.Mardikar for the applicant, learned Additional Public Prosecutor Shri H.Futane for the State, and perused investigation papers, it reveals that on conducting the raid, commercial quantity of contraband article "ganja" of 1555 kilograms 320 grams was found in possessions of the co-accused which is seized by the police. During the investigation, the investigating officer recorded statements of the co-accused from which the name of the applicant revealed which disclosed that that the applicant has supplied the said contraband article to the co-accused. To establish the link, the investigating agency placed reliance on the statement of Sominath who is driver by profession working with co-accused Ambadas Sanje. From the statement of this witness, it reveals that as per the direction of his employer, he took the applicant and his family members in the car of co-accused Ambadas and dropped them at Nanded. The statement of son of the applicant is also recorded from which it reflects that on the say of the applicant from his mobile phone he has paid some amount to Sheikh Rambabu on 15.10.2022, 24.10.2022 and some amount to Subhash on 14.10.2022 and to Ambadas on 18.10.2023. He stated before the police that he is not

aware why the said amount is deposited or paid to the persons. During the investigation, the investigating officer has collected statement of bank account to show that the amount was transferred from his account to the accounts of the other co-accused. Thus, admittedly, except the statement of the co-accused and the statement of the son of the applicant, there is no other material collected during the investigating to show that either the applicant was supplying any contraband articles or he is involved in the same.

9. Perusal of the record shows that apart from the aforesaid transaction, admittedly, there is not a single material to show the money transaction between the applicant and other co-accused and the applicant is involved in the crime. In view of the statements and statement of bank account, admittedly, the money transaction appears to be there. However, it would not be sufficient to connect the applicant holding the said money transaction is regarding supplying of the contraband article "ganja".

10. At this stage, it would not be proper to record a finding that the applicant is involved in the transaction with the co-accused as far as the seized contraband article is

concerned. However, the said aspect is sufficient to record satisfaction of conditions contemplated under Section 37 of the said Act.

11. The Honourable Apex Court in the case of **Tofan Singh vs. The State of Tamil Nadu** *supra* held that the statement recorded under Section 67 of the said Act cannot be used as a confessional statement in the trial for offence under the said Act. The Honourable Apex Court in paragraph No.59 observed that the marginal note to Section 67 indicates that it refers only to the power to "call for information etc". It is further held that the said statement recorded under Section 67 of the said Act cannot be used as confessional statement and the accused are released on bail.

12. In the case of **State (By NCB) Bengallure vs. Pallulabid Ahmad Arimutta and anr**, reported in (2022)12 SCC 633 along with the connected matter wherein also it has been held that in clear terms in **Tofan Singh vs. The State of Tamil Nadu** *supra* that confessional statement recorded under Section 67 will remain inadmissible in the trial of an offence under the said Act.

13. In the teeth of the aforesaid decision, the arrest of

the applicant on the basis of confessional statement of the co-accused under Section 67 of the said Act cannot form basis for overturning the impugned order releasing him on bail.

14. In the light of the above observations and considering the fact that except the confessional statement of the co-accused and the statement of the son of applicant showing the transaction between the applicant and other co-accused, no other material is on record to connect the applicant with the alleged offence. From the money transaction or from the statement of the son of the applicant, it cannot be inferred that money is transferred from the co-accused against the transaction of the contraband articles.

15. At this stage, in the light of the insufficient material available against the applicant and in view of the rigor of Section 37 of the said Act, after recording the satisfaction, the application of the applicant deserves to be allowed. Hence, I pass following order:

ORDER

(1) The criminal application is **allowed**.

(2) The applicant be released on bail, in connection with Crime

No.383/2022 registered with the non-applicant/police station for offences punishable under Sections 8(c); 20(b)(ii), and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on his executing a P.R.Bond in the sum of Rs.50,000/- with one solvent surety of the like amount.

(3) The applicant shall not leave the jurisdiction of the Nagpur District Court without prior permission of the Court.

(4) The applicant shall furnish his cell phone number and address with address proof.

(5) The applicant shall not directly or indirectly make any inducement and threat or promise to any witnesses acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the court or any police officer.

The criminal application stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!