

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.999 OF 2024

Mehrun Aslam Samlewale

.... Applicant

versus

State of Maharashtra

.... Respondent

.....

- Mr. Mithilesh Mishra i/b. S. N. Khan, Advocate for Applicant.
- Ms. Mahalakshmi Ganapathy, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 15th APRIL, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.104/2024, dated 20/02/2024, registered with Chikhali Police Station, Pimpri-Chinchwad, under sections 20(b), 20(b)(ii), 29 and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, (hereinafter referred to as 'NDPS Act').
2. Heard Mr. Mithilesh Mishra, learned counsel for the Applicant and Ms. Mahalakshmi Ganapathy, learned APP for the State.

3. The FIR is lodged by one Prasad Jangilwad, who was the police constable attached to Anti-Narcotic Cell, Crime Branch, Pimpri-Chinchwad Police Commissionerate. On 20/02/2024, he along with his other officers, was patrolling in Pimpri-Chinchwad area in the afternoon. At that time, they saw one person with a white nylon bag in his hand. His movements were suspicious. After looking at the police, he started walking away. He was stopped. He gave his name as Talib Latif Mohammed, staying in Darvesh Chinese Centre. He did not give satisfactory answers about the white nylon bag. The police called the Panchas and carried out the search. It was revealed that he was carrying 1 kg 588 gms of Ganja, in the form of small packets and loose Ganja. It was seized. The FIR mentions that he was asked as to from where he had brought that Ganja. At that time, he informed the police that he was working with the present Applicant. He was working with the Applicant at her Chinese Centre. He had clearly stated that at the behest of the present Applicant and her son Sohail, he was selling that Ganja. He added that he had brought that Ganja from the present Applicant. On this basis, the FIR is lodged.

4. Learned counsel for the Applicant submitted that the allegations are not true. The Applicant is not involved. The police did not conduct a search at the said Chinese Centre. They did not interrogate the present Applicant. He submitted that the police should have called the Applicant to police station for interrogation instead of asking for her custody by opposing her application for anticipatory bail.
5. Learned counsel relied on the orders passed by the Hon'ble Supreme Court in four cases:
 - (1) Seesh Singh @ Mor Vs. State of Punjab, decided on 02/12/2020, in Criminal Appeal No.822 of 2020.
 - (2) Vijay Singh Vs. State of Haryana, decided on 17/05/2023, in Special Leave to Appeal (Cri) No.1266/2023.
 - (3) Karishma Prakash Vs. Union of India & Anr., in Special Leave to Appeal (Cri.) No.6862/2022, decided on 17/10/2022.
 - (4) Sharik Khan Vs. Narcotics Control Bureau, in Special Leave Petition (Cri.) Diary No.48232/2023, decided on 06/03/2024.

6. Learned APP opposed these submissions. She submitted that the name of the Applicant has transpired in the FIR itself. The arrested accused had immediately informed the police that the Ganja was supplied by the present Applicant and at her instance it was being sold. Therefore, it is not an afterthought, as her name has transpired immediately. The investigation was carried out. The police have followed all the requirements of NDPS Act. There is compliance of section 43, 50, 52A of the NDPS Act. The inventory u/s 52A was taken on 29/02/2024. Samples were drawn. She submitted that the investigation has revealed the clear role played by the present Applicant.

7. I have considered these submissions. I have perused the investigation papers regarding the investigation carried out so far. As mentioned earlier, the arrested accused had immediately named the present Applicant as the supplier of the Ganja. It was being sold by him. He elaborated this fact in his statement and he has stated that on 28/02/2024, at about 02.30

p.m., the police had conducted his personal search and also the search of the said Chinese Centre. There is no substance in the submission that the police had not searched the said Chinese Centre. In this case, the arrested accused was employed by the present Applicant, which clearly shows that the main accused is the present Applicant and her interrogation is necessary to find out the entire chain of supply of Ganja. The recovered contraband is more than the specified small quantity. It is necessary to find out from where this Ganja was brought by the Applicant. For that purpose, her custodial interrogation is necessary.

8. As far as the orders produced by the learned counsel for the Applicant are concerned, they are on different facts as submitted by learned APP.

9. In case of Seesh Singh (supra) the Appellant before the Hon'ble Supreme Court was granted bail. The order mentions that without entering into the merits or demerits of the rival contentions on anticipatory bail application, in the opinion of

the Hon'ble Supreme Court, the Appellant in that matter, was held to be entitled to the facility of anticipatory bail.

10. In case of Vijay Singh (supra) it was observed that the Petitioner before the Hon'ble Supreme Court was not present at the spot, but was named by the co-accused. Apart from that, there was no material to implicate the Petitioner before the Hon'ble Supreme Court.

In the present case, the Applicant's Chinese Centre was searched as is reflected from the statement of the co-accused who is arrested. More over, case of the prosecution in the present case is that the arrested accused Talib was selling that Ganja at the behest of the present Applicant. That Ganja belonged to the present Applicant. Therefore, all these facts of the present case, show the involvement of the present Applicant in the offence.

11. In the case of Karishma Prakash (supra) it was observed that after perusing some of the statements recorded

u/s 67 of the NDPS Act, the Hon'ble Supreme Court confirmed the interim order, by staying arrest of the Petitioner in that case. Thus, that order was passed in the facts of the case based on the statements recorded u/s 67 of the NDPS Act.

12. In case of Sharik Khan, the Hon'ble Supreme Court had refused to grant any relief to the Petitioner even on merits in that case.

13. Therefore, all these orders will not help the present Applicant in the present set of facts.

14. In this connection, the observations of the Hon'ble Supreme Court in two other judgments are important. In the case of Muraleedharan Vs. State of Kerala, as reported in (2001) 4 Supreme Court Cases 638, the Hon'ble Supreme Court was considering the challenge to the order passed by the High Court of Kerala reversing the order passed by the Sessions Judge granting anticipatory bail to the accused in that case, who were alleged to have committed offence punishable u/s 8 of the Kerala Abkari Act. In that connection, the Hon'ble Supreme Court had

referred to the observations made by the Sessions Court, wherein the Sessions Judge had observed that no material could be collected by the investigating agency to connect the accused with the crime except the confessional statement of the co-accused; while granting anticipatory bail to that accused. In that context, observations of the Hon'ble Supreme Court in paragraph Nos.4 to 8 of that judgment are important, which read thus:

- “4. According to the Sessions Judge “no material could be collected by the investigating agency to connect the petitioner with the crime except the confessional statement of the co-accused”. He also observed that “I do not think that any prejudice will be caused to the prosecution in the event of granting anticipatory bail especially when the petitioner has not so far been arrayed as an accused in the case.”*
- 5. It is disquieting that a Sessions Judge has chosen to adopt such inane reasoning for granting anticipatory bail in cases involving offences for which the legislature has imposed stringent restrictions even in regard to the grant of regular bail.*

6. *One of the offences involved is Section 8(2) of the Act which is punishable with imprisonment for a term which may extend to ten years and a fine which shall not be less than rupees one lakh. Section 41-A of the Act says that no person accused of an offence punishable for a term of imprisonment for three years or more shall be released on bail or on his own bond unless:*

“41-A. (1) The Public Prosecutor or the Assistant Public Prosecutor, as the case may be, has been given an opportunity to oppose the application for such release, and

- (2) Where the Public Prosecutor or the Assistant public Prosecutor, as the case may be, opposes an application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offences and that he is not likely to commit any offence while on bail.”*

7. *The above provision is in pari materia with Section 37 of the Narcotic Drugs and Psychotropic Substances Act. This Court has held, time and again, that no person who is involved in an offence under that Act shall be released on bail in contravention of the conditions laid down in the*

said Section. (vide Union of India vs. Ram Samujh). If the position is thus in regard to an accused even after arrest, it is incomprehensible how the position would be less when he approaches the court for pre-arrest bail knowing that he would also be implicated as an accused. Custodial interrogation of such accused is indispensably necessary for the investigating agency to unearth all the links involved in the criminal conspiracies committed by the persons which ultimately led to the capital tragedy. We express our reprobation at the supercilious manner in which the Sessions Judge decided to think that “no material could be collected by the investigating agency to connect the petitioner with the crime except the confessional statement of the co-accused”. Such a wayward thinking emanating from a Sessions Judge deserves judicial condemnation. No court can afford to presume that the investigating agency would fail to trace out more materials to prove the accusation against an accused. We are at a loss to understand what would have prompted the Sessions Judge to conclude, at this early stage, that the investigating agency would not be able to collect any material to connect the appellant with the crime. The order of the Sessions Judge, blessing the appellant with

a pre-arrest bail order; would have remained as a bugbear of how the discretion conferred on Sessions Judges under Section 438 of the Cr.P.C would have been misused. It is heartening that the high Court of Kerala did not allow such an order to remain in force for long. By the impugned order passed by the learned Single Judge of High Court an unwholesome benefit wangled by the appellant was rightly reversed.

8. The appeals are dismissed.”

15. In another judgment in the case of State of Haryana Vs. Samarth Kumar, in Criminal Appeal No.1005 of 2022, the Hon’ble Supreme Court considered the question of pre-arrest bail in respect of the offences under the NDPS Act u/s 17, 27A and 85 of the NDPS Act. The relevant observations are in paragraph Nos.4 to 10, which read thus:

“4. The High Court decided to grant pre-arrest bail to the respondents on the only ground that no recovery was effected from the respondents and that they had been implicated only on the basis of the disclosure statement of the main accused

Dinesh Kumar. Therefore, reliance was placed by the High Court in the majority judgment of this Court in Tofan Singh V. State of Tamil Nadu (2021) 4 SCC 1.

5. *But, it is contended by the learned Additional Advocate General appearing on behalf of the State of Haryana that on the basis of the anticipatory bail granted to the respondents, the Special Court was constrained to grant regular bail even to the main accused-Dinesh Kumar and he jumped bail. Fortunately, the main accused-Dinesh Kumar has again been apprehended. According to the learned Additional Advocate General, the respondents in the second of these appeals is also a habitual offender.*
6. *Learned counsel appearing on behalf of the respondent in the first of these Appeals contends that the State is guilty of suppression of the vital fact that the respondent was granted regular bail after the charge-sheet was filed and that therefore, nothing survives in the appeal. But, we do not agree.*
7. *The order of the Special Court granting regular bail to the respondents shows that the said order*

was passed in pursuance of the anticipatory bail granted by the High Court. Therefore, the same cannot be a ground to hold that the present appeals have become infructuous.

8. *In cases of this nature, the respondent may be able to take advantage of the decision in Tofan Singh v. State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.*
9. *To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.*
10. *In view of the above, the appeals are allowed. The impugned orders are set-aside. As a consequence, the Appellant-State is entitled to take steps, in accordance with law.”*

16. Thus, in both these judgments in the case of Muraleedharan (supra) and Samarth Kumar (supra), the Hon’ble Supreme Court had observed and discussed the

approach of the Court to be adopted in such cases where the accused is apprehending arrest on the basis of statement made by the co-accused. In both these cases, the anticipatory bail was denied to such accused. These observations are applicable to the facts of the present case.

17. In the background of the material available in the present case, the investigation papers include the statements of the other members of the police party. They have corroborated the narration in the FIR. There is a Panchanama signed by the two Panchas. In such cases, it is more important to nab the supplier. The arrested accused in this case was merely acting at the behest of the supplier i.e. the present Applicant. Therefore, it is necessary to break the chain of the supply. The Applicant's custodial interrogation will only reveal the entire chain of supply. At this stage, the investigating agency will have to rely on the information supplied by the arrested accused, otherwise there is no other way to reach the supplier and hence to the root of the entire offence. The chain needs to be broken. Merely arresting the accused, who has played a smaller part, will not

help the investigating agency into taking effective steps to arrest the main accused. Therefore, in such serious case, the investigating agency will have to be given sufficient opportunity to find out as to how the main accused are involved in this offence.

18. Learned APP pointed out that there are similar antecedents against the Applicant's son. The investigation has revealed that the arrested accused was instructed by the Applicant and her son to sell that Ganja and it was supplied by the Applicant and her son. In this view of the matter, it is absolutely necessary that the Applicant is arrested and is interrogated in custody. The offence is quite serious. In this view of the matter, no relief can be granted to the Applicant. The application is rejected.

(SARANG V. KOTWAL, J.)