



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

CRIMINAL APPLICATION (ABA) NO.156 OF 2024

Rahul Kumar s/o Anil Ray

..VS..

State of Maharashtra, through PSO PS Railway Nagpur

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

Court's or Judge's Order

.....
Shri Y.D.Shukla, Counsel for the Applicant.
Shri A.B.Badar, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 05/04/2024

PRONOUNCED ON : 12/04/2024

1. Apprehending arrest at the hands of the police in connection with Crime No.1359/2023 registered with the non-applicant/police station for offences punishable under Section 20(II) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act), the applicant has preferred this application for grant of pre-arrest bail.

2. Sachin Shamsher Singh Dalal, Constable of the Nagpur Railway Police Force, lodged a report. As per the report, on 17.11.2023, he along with other staff and dog squad, was on patrolling duty. While carrying out the duty, he checked Coach No.A1 of Train No.20805, Andhra Pradesh Express, on arrival at 4:00 pm at Nagpur Station. He found a bag in a suspicion circumstance

under seat No.5 of the said coach. When he enquired about the said bag, none of passengers claimed ownership over the said bag and, therefore, he dogged the said bag from the train and lodged the report. During investigation, it revealed that the applicant was carrying the said bag. On the basis of the said report, the police registered the crime.

3. Heard learned counsel Shri Y.D.Shukla for the applicant and learned Additional Public Prosecutor Shri A.B.Badar for the State.

4. Learned counsel for the applicant submitted that the applicant is implicated falsely in the alleged offence. The applicant was not travelling in the said train. He was made a scapegoat into the crime. Nothing is seized from his possession. There are no criminal antecedents against him. There is absolutely no material to show that the applicant was travelling on seat No.5 of the said train. The reservation chart also nowhere shows that the applicant was travelling in the said train. Thus, the bag was not found in possession of the applicant. As such, the applicant be protected by granting him pre-arrest bail.

5. In support of his contentions, learned counsel for the

applicant placed reliance on following decisions:

1. **Shri Balchand Jain vs. State of Madhya Pradesh, reported in (1976)4 SCC 572;**
2. **Narcotics Control Bureau vs. Kishan Lal and Others, reported in (1991)1 SCC 705;**
3. **Ragini Dwivedi alias Gini Alias Rags vs. State of Karnataka, reported in (2021)16 SCC 719,**
4. **Anticipatory Bail Application No.943/2023 (Shaikh Naseem Shaikh Husain vs. The State of Maharashtra) decided by this Court at Bench Aurangabad on 9.7.2023.**

6. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the application on ground that during investigation, regarding berth Nos.5 and 6 of Coach No.A1 of Train No.20805, Andhra Pradesh Express, on the basis of reservation chart and CDR and SDR, it was found that person having mobile number 9405155330 travelled from Vishakhapatnam. One Samrat Chaudhari stated that he along with one Rahul Yadav was travelling in the said train and the said bag was with Rahul Yadav. Thus, involvement of the applicant revealed during investigation. As such, the application deserves to be rejected.

7. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on the decision of the

Honourable Apex Court in the case of **The State of Haryana vs. Samarth Kumar, reported in 2022 LiveLaw (SC) 622.**

8. Having heard learned counsel for the applicant and learned Additional Public Prosecutor for the State and perused investigation papers, it reveals that during patrolling the informant found a blue colour bag containing contraband “Ganja” and during investigation, nobody claimed ownership of the said bag. The said bag was seized by the police. After seizure, samples were obtained in presence of panchas. During investigation, the Investigating Officer verified reservation chart of berth Nos.4 and 6 and obtained mobile numbers of passengers from PNR and obtained CDR and SDR. It revealed to the investigating agency that person having mobile number 9005155330 had travelled on 1.10.2023 to 2.11.2023 four times by flight and train, till Vishakhapatnam. While returning from Vishakhapatnam, he travelled by train and location of the said person reveals as Gorakhpur (Uttar Pradesh). After following a due procedure, police officials visited Gorakhpur and it revealed to them that the said mobile number is owned by Samrat Chaudhary, who was residing on rental basis at the house of one Atul Bhalla. The said person was called at the police station and it revealed to them that on 16.11.2023, from Vishakhapatnam to New

Delhi in A.P.Express, Coach No.A1, he was travelling along with applicant Rahul and Rahul was holding the said bag, which was seized by the police.

9. Thus, it revealed during the investigation that the applicant was carrying the said bag in the train, which was seized by the police. Thus, during the investigation, the investigating agency recorded satisfaction regarding involvement of the applicant and crime was registered against him. Thus, from investigation, which is at initial stage, involvement of the applicant revealed. In the said bag, contraband "Ganja" worth of Rs.2,34,315/- weighing 15.621 kilograms grams was seized.

10. The Honourable Apex Court, in the case of **Shri Balchand Jain vs. State of Madhya Pradesh** *supra*, as relied by learned counsel for the applicant, has considered provisions under Section 438 of the Code of Criminal Procedure and Rule 184 of the NDPS Act and held that anticipatory bail is misnomer. It is not as if the bail is presently granted by the court in anticipation of arrest. Rule 184 commences on a *non-obstante* clause and in its operative part imposes a ban on release on bail of a person accused or convicted of a contravention of the Rules or orders made thereunder, if in custody, unless two conditions are satisfied. The

said Rule imposed fetters on the exercise of the power of granting bail in certain kinds of cases and removes such fetters on fulfillment of the aforesaid two conditions.

11. The Honourable Apex Court, in the case of **Narcotics Control Bureau vs. Kishan Lal and Others, reported in (1991)1 SCC *supra***, as relied by learned counsel for the applicant, held that the Narcotic Drugs and Psychotropic Substances Act, 1985 is a special enactment, enacted with a view to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances. It is a special enactment. Section 37 of the NDPS Act starts with the *non-obstante* clause limiting the scope of applicability of the Criminal Procedure Code regarding the bail. The non-obstante clause with which the Section starts should be given its due meaning and clearly it is intended to restrict the powers to grant bail. In view of Section 4 of the Code, when there is a special enactment in force relating to the manner of investigation, enquiry or otherwise dealing with offences, the other powers under the Code of Criminal Procedure should be subject to such special enactment. In interpreting the scope of such a statute the dominant purpose underlying the statute has to be borne in mind. Consequently, the power to grant bail under any of the provisions

of the Code should necessarily be subject to the conditions mentioned in Section 37 of the NDPS Act. It must, therefore, be held that the powers of High Court to grant bail under section 439 of the Code are subject to limitation contained in amended Section 37 of the NDPS Act.

12. The Honourable Apex Court, in the case of **The State of Haryana vs. Samarth Kumar** *supra*, as relied by learned Additional Public Prosecutor for the State, held that in cases of this nature, respondents may be able to take advantage of the decision in **Tofan Singh vs. State of Tamil Nadu, reported in (2021) 4 SCC 1**, 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.

13. After going through ratio laid down by the Honourable Apex Court, there is no dispute as to the fact that there is rigor under Section 37 of the NDPS Act to grant bail to accused who are prosecuted of the offence punishable under the provisions of NDPS Act.

14. The Honourable Apex Court, in the case of **State of Kerala vs. Rajesh, reported in 2020 ALL SCR Cri 1555**, laid down

liberal approach in the matter of bail under the NDPS Act is uncalled for. Thus, to exercise the discretion, the court has to record satisfaction that accused being not guilty has to be based on reasonable grounds. The expression “reasonable grounds” means something more than *prima facie* grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

Thus, recording of satisfaction on these aspects is *sine qua non* for granting of bail.

15. In the instant case, investigating papers show involvement of the applicant after verifying reservation chart from which it reveals that one person by name Samrat Chaudhary was travelling on berth Nos.4 and 6 along with the applicant. It further reveals from the investigation that the applicant was carrying the said bag along with him at the relevant time. The investigation is at initial stage. Considering *prima facie* material, i.e. disclosure by the co-passenger, sufficiently shows involvement of the applicant in the alleged offence.

16. At this stage, material on record sufficiently shows involvement of the applicant in the alleged crime, which is more than *prima facie* case.

17. In this view of the matter, considerations for grant of anticipatory bail and bail under Section 439 of the Code of Criminal Procedure are different. As such, the application deserves to be rejected and the same is **rejected**.

The application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!