



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

CRIMINAL APPLICATION (BA) NO.239/2024

Sonu Nanak Thakur

..VS..

**State of Maharashtra, through Sub-Inspector, Railway Police Force, Railway
Police Station, Railway Station, Nagpur**

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

Court's or Judge's Order

Shri Rahul Waghmare, Advocate h/f Shri S.N.Nandeshwar, Counsel for the Applicant.
Shri M.J.Khan, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 31/07/2024

PRONOUNCED ON : 02/08/2024

1. By this application, being moved under Section 439 of the Code of Criminal Procedure, the applicant seeks regular bail in connection with Crime No.385/2022 registered with the non-applicant/police station for offences punishable under Sections 20(b)(ii)(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act).

2. The applicant came to be arrested on 6.7.2022 and since then he is in jail.

1. The accusations against the applicant are on the basis of report lodged by Police Sub Inspector Subhash Madavi, attached

with the Railway Police Force at Nagpur. As per his report, on 8.6.2022, during search of train No.20805 Visakhapatnam New Delhi Express, at the Nagpur Railway Station, at platform No.1, he found that in coach No.S5, some bags having smell of “Ganja” were lying in a suspicion condition below seat No.1. He suspected four persons namely Sonam Shakil Ahmad, Mohd.Aseef, Imran Mohd. Irshad, and Gulfan Usman Khan. During enquiry with the said persons, it reveals that they are carrying “Ganja” in the said bags. At the same time, five bags were found in coach No.B1 and three persons namely Gulshan Sharif, Saif Ali, and Vipin Vijenda Singh were found in a suspicion condition. On opening the bags, 106.807 kilograms “Ganja” from 8 bags was seized by him. In presence of panchas, by observing mandatory provisions, in view of Sections 42 and 50 of the NDPS Act, a search was taken. The samples were obtained in presence of panchas. The contraband articles are also referred to the Magistrate for inventory. During investigation, it revealed that the applicant was along with the arrested accused at Visakhapatnam whereat the said bags of contraband articles were handed over to the co-accused and the applicant travelled to Delhi whereat he was arrested. During investigation, CCTV Footage of Yamini Lodge was obtained by the

investigating officer wherein association of the applicant with the co-accused was revealed and, therefore, he was arrested.

2. Learned counsel Shri Rahul Waghmare for the applicant, submitted that perusal of the chargesheet would reveal that the applicant has no nexus with the contraband article as the said contraband article is not found in possession of the applicant. There is no material to show that the applicant has any association with the other accused. There is no confessional statement of the co-accused showing involvement of the applicant. Thus, merely on suspicion, the applicant was arrested in the above said crime. Now, the investigation is already completed and chargesheet is already filed. Further incarceration of the applicant in jail is not required. As such, the application deserves to be allowed.

3. Learned Additional Public Prosecutor Shri M.J.Khan for the State, strongly opposed the application on ground that during the course of investigation, seven accused were arrested by the Railway Police Force. The applicant was also present in the said train along with contraband article. He succeeded to flee away from the train. Commercial quantity of the contraband was seized. There was a compliance under Section 50 of the NDPS Act

whereby the investigating officer informed about the right of the accused in respect of search in presence of a gazetted officer which the arrested accused declined. The investigating officer has also obtained photographs of the contraband articles. During investigation, it further revealed that the applicant and other co-accused visited Visakhapatnam for purchasing the contraband. They stayed in Yamini Lodge. The CCTV Footage of the Yamini Lodge was obtained. The arrested accused and applicant who was absconding are seen in the said CCTV Footage. The statement of the Lodge Manager was also recorded, who also substantiated the contention that the applicant was seen staying in Lodge namely Vijaya Krishna Lodge along with the other co-accused. The extract of the register of the said lodge was also collected. Thus, there is a *prima facie* material against the applicant. As such, the application deserves to be rejected.

4. After hearing learned counsel for the applicant and learned Additional Public Prosecutor for the State, perused investigation papers. During the investigation, the Investigating Officer recorded statement of K.Surya Narayan, serving as receptionist in the said Vijaya Krishna Lodge, who stated about the stay of the applicant along with other co-accused in the said

Lodge. The extract of the register maintained and receipts of the said Lodge show association of the applicant in the said Lodge. During the investigation, the investigating officer also collected the CCTC Footage from Yamini Lodge wherein also the applicant was seen along with other co-accused leaving the counter along with bags. Thus, association of the applicant reveals from the said CCTV Footage and the statement of the receptionist of the Lodge. The receipts collected during investigation and extract of the register also substantiates the same. The statement of one Shankar Appa Naidu Pise, the Hotel Manager, also shows that the applicant was along with the other co-accused and stayed in the hotel.

5. Thus, at this stage, sufficient material is collected from Yamini Lodge as well as Vijaya Krishna Lodge to show association of the applicant with the other co-accused. Though the contraband article was not found in possession of the applicant, the CCTV Footage shows the applicant and other seven accused leaving counter of the Yamini Lodge along with the bags. The applicant was identified as absconding accused from the said CCTV Footage.

6. In view of rigor under Section 37 of the NDPS Act, the bail can be granted if the court is satisfied that reasonable grounds of believing that accused is not guilty of offence and he would not commit the offence while on bail.

7. Thus, satisfaction contemplated regarding the 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 and probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision would require 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 grant of bail.

8. In the light of the above well settled legal position, at this stage, there is a sufficient material on record to hold that the applicant is involved in the crime. In view of the rigor under Section 37 of the NDPS Act, I do not find any merits in submissions of learned counsel for the applicant and there are

reasons to believe that the applicant is guilty of the said offence.

9. In this view of the matter, the application deserves to be rejected and the same is rejected.

The application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!