



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.356 OF 2024

Mandapati Virababu @ Buchhi s/o Bucchi Mandapati
Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Pardi,
Nagpur

WITH

CRIMINAL APPLICATION (BA) NO.366 OF 2024

Padala Chitti Babu s/o Padala Ramanna
Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Pardi,
Nagpur

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

Court's or Judge's orders

Mr. A. K. Bhangde, Advocate for applicants in both applications.
Mr. A. G. Mate, APP for respondent/State in both applications.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 04/07/2024

1. These applications are filed by the accused Nos.6 and 8 for grant of 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)(c), 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the said Act").

2. The applicant in Criminal Bail Application No.356/2024 is arrested on 19.11.2022 whereas applicant in Criminal Bail Application No.366/2024 is

arrested on 27.11.2022 and since then they are behind bars.

3. As per the accusations against the present applicants, 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 of the said bags, 72 bags were found containing 1555 kilograms 320 grams "ganja" which was seized by the police in presence of panchas. During the 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 applicants over the said

piece of paper seized from the arrested accused. It is further alleged that on the basis of the statement of the arrested accused, the names of the present applicants are revealed. It further revealed that there was continuous contact between the present applicants and the other co-accused who are subsequently arrested. On the basis of the said, the present applicants are arraigned as an accused.

4. Learned Counsel Mr. Bhangde, for the applicants submitted that applicants are neither involved nor found at the spot, only on the basis of CDR reports, they are arraigned as an accused. Except the statement of the co-accused, there is no other material to connect the present applicants with the alleged offence. He submitted that the applicants are arrested merely on the basis of the statement of the co-accused and the CDR report which are collected during the investigation. Thus, there is no sufficient material to connect the present applicants with the alleged offence. Merely because there was communication between the present applicants and other co-accused is not sufficient to show the involvement of the present applicants in the alleged offence.

5. In support of his contentions, he 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 02.03.2022 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 applicants whose bail applications were under consideration.

6. Per contra, learned APP 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 applicants are not resident of the State of Maharashtra and, therefore, there is likelihood of fleeing away, in view of that, the application deserves to be rejected.

7. After hearing the learned Counsel for the applicant and learned APP for the State, perused the investigation papers, from which it reveals that on conducting the raid, commercial quantity of contraband article "ganja" of 1555 kilograms and 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 as well as one chit was found in the vehicle which was intercepted by the Investigating agency. To establish the link, the investigating agency has placed reliance on the statement of the co-accused as well as the CDR reports.

8. Learned APP pointed out that accused No.8 has communicated with the accused Nos.5 and 6 on eight times, whereas accused No.6 has contacted with the accused No.5 on four occasions. Admittedly, all these accused are from the Andhra Pradesh. Merely because there was communication between them, as observed by the **Gujarat High Court** (supra) could not be sufficient material to establish live-link between the co-accused and the present applicants. On the basis of this communication, it cannot be presumed that they communicated regarding the said contraband article. Except the CDR report, there is no other material to connect the present applicants with the alleged offence.

9. As observed by the Hon'ble Apex Court in the case of **Tofan Singh vs. The State of Tamil Nadu** (supra) wherein it is 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 Hon'ble 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 a confessional statement and the accused are released on bail.

10. In the case of **State (By NCB) Bengaluru 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.

11. In the teeth of the aforesaid decision, the arrest of the applicants 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.

12. In the light of the above observations and considering the fact that except the confessional statement of the co-accused and the CDR reports there is no other material to connect the present applicants with the alleged offence. Merely on the CDR reports it cannot be presumed that the

communication between them in respect of the said transactions.

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

ORDER

(i) The Criminal Application (BA) No.356/2024 and Criminal Application (BA) No.366/2024 are allowed.

(ii) The applicant in Criminal Application (BA) No.356/2024 **Mandapati Virababu @ Buchhi s/o Bucchi Mandapati** and the applicant in Criminal Application (BA) No.366/2024 **Padala Chitti Babu s/o Padala Ramanna**, shall 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)(c), 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, on executing P.R. Bond in the sum of Rs.50,000/- each with one solvent surety of the like amount.

(iii) The applicants shall attend the Pardi Police Station twice in a month on 1st and 15th of every month.

(iv) The applicants shall not leave India without prior permission of the District Court, Nagpur.

(v) The applicants shall surrender their passports before the Investigating Officer, if they are having.

(vi) The applicants shall not directly or indirectly make any inducement and threat or promise to any witnesses who are acquainted with the facts of the case.

14. The criminal applications are disposed of.

(URMILA JOSHI-PHALKE, J.)