



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

CRIMINAL APPLICATION (BA) NO.390 OF 2024

Akash Prem Pal

Vs.

State of Maharashtra, Through Police Station Lohmarg, Railway Police
Station, 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. R. Rawlani, Advocate for applicant.
Mr. N. B. Jawade, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 27/06/2024

1. By preferring this bail application under Section 439 of the Code of Criminal Procedure, the applicant is seeking bail in connection with Crime No.385/2022 registered under Section 20(b)(ii)(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as 'the NDPS Act').

2. On 08.06.2022 the staff of the Railway Police Force was on patrolling duty and they checked the Train No.20805 Visakhapatnam - New Delhi Express at Platform No.1 at about 2.45 p.m. They suspected that ganja is transported in the Coach No. ECO-204243, S-5. Accordingly, they have entered in the said Coach on seat Nos.1 to 4, three male and one female were sitting along with four bags. Though they are enquired no satisfactory answer was

given by them and therefore, their names and whereabouts are also enquired and it revealed that three bags they were carrying containing the ganja and one bag was having clothes. Similarly, the another patrolling party had received the strong smell like ganja from Coach ECO-205481 B-1, seat No.12. There were five bags which were kept beneath and on intercepting the same, the ganja was found in the said bag. Accordingly, seven persons were brought. After following the due process of search and seizure, the crime was registered against the present applicant. As far as the present applicant is concerned, he is arrested on the basis of the statement of the co-accused.

3. It is submitted by the learned Counsel for the applicant that except the statement of the co-accused, there is no other material collected by the investigating agency to connect the present applicant with the alleged offence. He further submitted that the confessional statement of the co-accused is not admissible against the present applicant, in view of the decision of the Hon'ble Apex Court in the case of **Tofan Singh Vs. The State of Tamil Naidu** reported in **(2021) 4 SCC 1**. He submitted that nothing is recovered from the present applicant. Merely on suspicion that he is having connection with the co-accused, he is arrested and he is languishing in Jail from 03.07.2022 i.e. from the date of his arrest, there is no progress in the trial.

Thus, on merit as well as delay in trial, the application of the applicant for grant of bail, deserves to be allowed.

4. Learned APP strongly opposed the said application on the ground that the applicant is the perpetrator of the crime. He has supplied the said contraband articles to the accused arrested. The seized contraband is of a commercial quality. It revealed during the investigation that present applicant had taken all the seven persons to the Visakhapatnam and made their arrangement for staying at Lodge and handed over them bags containing ganja. Thus, the role of the present applicant is more than abettor and there is *prima facie* material against him and therefor, the application deserves to be rejected.

5. After hearing the learned Counsel for the applicant and learned APP for the State, perused the investigation papers, from which it revealed that investigating agency has seized the ganja of 106.807 Kg. The co-accused who is travelling in the train 20805 Visakhapatnam – New Delhi Express. On enquiring with the co-accused the ganja was seized by the patrolling party. Immediately the search was carried out by following the due process. The samples are drawn from the said contraband articles. Thereafter, the said samples were forwarded to chemical analysis (CA).

6. As per the submissions of the learned Counsel for the applicant that there is no compliance of Section 52-A also. He submitted that as far as the present applicant is concerned, he was not found along with the contraband articles and except the statement of the co-accused, there is no other material to connect the present applicant. On perusal of the investigation papers also it reveals that admittedly, the applicant was not travelling in the same train. He was arrested from Delhi. He was arrested on the basis of the statement made by the co-accused namely Mohd. Ashif Ahmad Shakil Ahmad, Gulfan Usman Khan, Saif Ali Ashraf Ali Ansari, Vipin Vijendra Singh, Gulshan Sharif and Sonu Nanak Thakur and Sonam Shakil Ahmad. Thus, from the investigation papers, it reveals that except the statement of the co-accused, there is no other material to show that it was the present applicant who has provided the arrested accused the contraband articles at Visakhapatnam.

7. It has been held in clear terms in **Tofan Singh Vs. The State of Tamil Naidu** that a confession statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. The Hon'ble Apex Court in the order passed in **Special Leave to Appeal (Crl.) No.242/2022 Arising out of Diary No.22702 of 2020** wherein also referred the **Tofan**

Singh Vs. State of Tamil Naidu (supra) and held that in the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail.

8. In the light of the above observation of the Hon'ble Apex Court and the view taken by the Hon'ble Apex Court that rigour Section 37 would not come into play considering that the confessional statement is not admissible against the co-accused. In view of that, the applicant has made out the case for grant of bail. Accordingly, I proceed to pass following order:

ORDER

(i) The application is allowed.

(ii) The applicant **Akash Prem Pal** shall be released on bail in connection with Crime No.385/2022 registered with Lohmarg Railway Police Station, Nagpur for the offence punishable under Section 20(b)(ii)(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, on executing PR bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant who is resident of Delhi shall once attend the Lohamarg i.e. Railway Police Station Nagpur on 1st of every

month and the Investigating Officer shall record his presence.

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

(v) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(vi) The applicant shall not indulge the similar type of the incidents in future.

(vii) On contravention of any of the condition the bail granted deserves to be cancelled.

(viii) The applicant shall attend the proceeding before the learned Special Court without seeking any exemption unless there are exceptional circumstances.

9. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)