



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

CRIMINAL APPLICATION (BA) NO. 396 OF 2024

Ashok Kumar Jesaram Vs State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. R.H. Rawlani, counsel for the applicant.

Mr. N.B.Jawade, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 30/07/2024.

1. The applicant came to be arrested on 17/06/2023, in connection with Crime No. 169/2023 registered with Police Station Bela, District Nagpur for the offence punishable under Sections 8(c), 20(b), 2(a) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter referred as 'NDPS Act').

2. The crime is registered on the basis of a report lodged by Ashish Devidas Morghade alleging that he was on patrolling duty on 24/05/2024, at the relevant time, he received secret information that three persons arrived at Rajasthani Dhaba on three motorcycles, and they were carrying the Ganja to sell. It is further alleged that, thereafter, he immediately called two panchas, and along with the raiding party members, they came at Rajasthani Dhaba, situated at Mouza Chimnazari Police Station Bela, Nagpur, around 1.10 p.m. He saw a Mat under the tree near Dhaba along with three motorcycles. On an inquiry, the Dhaba owner stated that three customers had come there for

taking meals, and thereafter, they were taking rest below the tree; however, on seeing the police, they ran away. Though they took search of the three persons, by taking benefit of the forest area, they fled away from the spot of the incident. In presence of the panchas, the gunny bags which were tied on the motorcycle were opened, and it was found that they were carrying 43.540 Kg of Ganja. By following the due procedure, they obtained the samples, and the said samples were forwarded for the inventory as well as the chemical analysis. The motorcycles were also seized by the investigating agency. At the said spot, documents like the Aadhar Card, Pan Card Driving License, and Debit Card in the name of Ashok Sing as well as in the name Vipinsingh were found. The said documents were seized by the police. On the basis of the said documents, the police have arrested the present applicants from Rajasthan. After completion of the investigation, the charge-sheet is filed against the present applicant.

3. Heard learned counsel for the applicant, and he submitted that, merely on suspicion, the present applicant is arrested. As far as the seizure of the Ganja from the possession of the applicant is concerned, he was not found on the spot. Merely because his Aadhar card, pan card, and driving license were found on the spot, he was arrested. He submitted that there is non-compliance of the mandatory provisions by the investigating agency. Now, the investigation is completed and charge-sheet is filed. He further submitted that the samples were not collected by the

investigating agency as per the norms, and they had mixed the substance from all the bags and thereafter drawn the samples, which were sent to the CFSL. Thus, there is absolutely no compliance of the mandatory provision.

4. In support of his contention, he placed reliance on following citations which is as under;

(a) Criminal Application (BA) No. 671/2023 in Nitin s/o Kishor Karingwar Vs State of Maharashtra decided on 31/08/2023;

(b) In Criminal Bail Application No. 1296/2022 [Ibrahim Khwaja Miya Sayyed @ Raju vs The State of Maharashtra] at Principal Seat at Bombay decided on 17/03/2023;

(c) In Criminal Application (BA) No. 1130/2023 [Subhash s/o Tukaram Pandule and another vs State of Maharashtra] decided on 30/04/2024;

(d) In the case of Amarsingh Ramjibhai Barot Vs. State of Gujarat [2005 AIR (SC) 4248];

(e) In the case of Amina Vs State NCT of Delhi [2023(2) DC (Narcotics) 884 of Delhi High Court;

(f) In the case of Navneet Jat V/s The State of Madhya Pradesh [2022(2) M.P. W.N. 163];

(g) In the case of Mohammed Khalid and another V/s The State of Telangana in Criminal Appeal No(s) No. 1610 and 1611/2023 decided on 01/03/2024 [S.C.];

He further submitted that as there is non-compliance of mandatory provisions of NDPS Act, the applicant shall be released on bail.

5. Learned APP strongly opposed the said application on the ground that, during the investigation, the original documents, i.e., the Aadhar Card, debit card, and driving license of the present applicant, were found at the spot of the incident. The applicant and other co-accused fled away after seeing the police at the spot of the incident by taking advantage of the forest area. Thereafter, their motorcycles were seized, and along with the motorcycle, three gunny bags were found containing 43.540 Kgs Ganja worth of Rs. 4,35,400/-. During the investigation, the CDR reports were also collected by the investigating agency, from which the involvement of the co-accused, Vipinsingh, was revealed.

6. He further submitted that during the investigation, the investigating agency has conducted the spot panchanama, the seized contraband was sent for inventory, and the inventory certificate was issued by the Judicial Magistrate First Class to the investigating authority. Thus, there is a prima-facie case made out against the present applicant. In view of the bar under Section 37 of the NDPS Act, the applicant has not made out the case to release him on bail. In view of that, the application deserves to be rejected.

7. Having heard learned counsel for the applicant and learned APP for the State, perused the record available. The

report is lodged by the police officer on the allegation that he received secret information that three persons came to Rajasthani Dhaba carrying the Ganja along with them. Therefore, he, along with the panchas and other raiding party members, came at Rajasthani Dhaba, wherein he saw one Mat under the tree along with three motorcycles. On inquiry with the Dhaba Owner, the Dhaba Owner disclosed that three persons came there, had a meal there, and were taking rest, but as soon as they saw police approaching them, they ran away from the spot by leaving the motorcycles as well as their original documents at the spot. While conducting the raid, at the said place, the investigating agency and raiding party members opened the said gunny bags which were tied on the motorcycle, wherein the Ganja was found. In presence of the Panchas, they collected the samples from the said bags, and thereafter, the entire contraband article was seized by the investigating agency. The recitals of the FIR show that they have seized the sample of 0.480 Kg Ganja in one plastic bag, and thereafter, it was sealed in the presence of the panchas. They have also forwarded the same samples for the inventory. The inventory report is on record, which shows that the contraband articles were produced before the magistrate. In the presence of the magistrate, the samples were collected by the investigating agency, and thereafter, the inventory panchanama was drawn by the investigating agency. On the basis of the documents found at the spot of the incident, the

whereabouts of the accused were collected, and thereafter, the accused was arrested.

8. As far as the contention of the learned counsel for the applicant is concerned, separate samples were not collected by the investigating agency, and mixed samples were collected. For that purpose, he placed reliance in Criminal Bail Application No. 1296/2022 (*supra*), wherein this Court has held that mixing of the contents of the container package and then drawing the representative samples is not permissible under the Standing Orders and rightly so since such a sample would be seized to be a representative sample of the corresponding container package and thereby released the accused on bail.

9. The Chapter-5 of the NDPS Act pertains to the procedure, and Section 51 contained in the said Chapter provides that the provisions of the Code of Criminal Procedure shall apply, in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches, and seizures made under the NDPS Act. Thus, unless there is anything contrary provided in the NDPS Act, in relation to all the warrants issued and arrests, searches, and seizures carried out by the investigating agency during the course of the investigation, the provisions of the Code of Criminal Procedure would apply.

10. It is further contention of the applicant that, there is no compliance as the samples were not obtained in presence of the magistrate, only inventory certificate is obtained. The

only contention of the learned counsel for the applicant is that the samples are obtained by mixing the entire contraband article. After going through the entire investigation papers, it reveals that there were three gunny bags, and from the said three gunny bags, the investigating agency has collected the sample of 0.155 grams as well as the sample of 0.485 grams. Thus, the panchanama as well as the recitals of the FIR clearly show that the samples are not obtained by mixing up the entire contraband article. While obtaining the sample, the investigating agency observed the procedure as per the Code of Criminal Procedure, which is not barred. Admittedly, whether the samples were collected from each bag or not is a matter of evidence. At this stage, it reveals that the investigating agency has collected 0.25-gram samples for the chemical analysis. Thereafter, 0.155 gram from one plastic Gunny Bag and 0.485 gram from another Gunny Bag, therefore, the contention of the learned counsel for the applicant that by mixing the entire contraband article, the samples are obtained is not substantiated.

11. At this stage, when the Court is concerned with the question of granting or refusing bail, in view of Section 37 of the NDPS Act, the bail can be granted, if the court is satisfied that there are reasonable grounds for believing that the accused is not guilty of offence i.e., likely to commit it while on bail, the bail should be granted. Thus, satisfaction contemplated regarding the accused being not guilty as to 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 the 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.

12. In light of the above well settled legal position at this stage, there is 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 merit in the submission of the learned counsel for the applicant, and there are reasons to believe that the applicant is guilty of the said offence. In view of that, the application deserves to be rejected. Accordingly, I proceed to pass the following order.

The criminal application is **rejected**.

[**URMILA JOSHI-PHALKE, J.**]