



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

CRIMINAL APPLICATION (BA) NO.478 OF 2024

(Sheikh Rambabu @ Roshan Sheikh s/o Sheikh Baburao 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. A.K. Bhangde, Advocate for the applicant.
Mrs. H.N. Prabhu, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- AUGUST 26, 2024.

By this application, the applicant is seeking bail in connection with Crime No.383/2022 registered with police station Pardi, Nagpur for offences punishable under Sections 8(c), 20(b)(ii)(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the said Act).

2. The applicant is arrested on 19.11.2022 and since then he is behind bar.

3. As per accusations against the applicant, on 15.11.2022, complainant Assistant Police Inspector Arun Bakal was informed by the Police Inspector of Crime Branch regarding 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 the goods loaded in the truck. There were certain bags of fertilizers and beneath the said bags, 72 bags were found containing 1555 kilograms and 320 grams “ganja” which was seized by the police in presence of panchas. During 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 to 7 persons and their contact numbers. The articles were forwarded for chemical analysis. After obtaining the samples by following due procedure, the First Information Report was lodged. As per the allegations, the investigating agency found the contact number of the applicants over the said piece of paper seized from accused Nos.1 and 2 showing that they are suppliers. It is further alleged that some money transactions were also exchanged between the co-accused Baburao Viraswami Kamapati and the present applicant. On the basis of said report, police have registered the crime against the present applicant.

4. Learned Counsel for the applicant submitted the applicant is neither owner of the truck nor there is any nexus with the said transaction of the contraband. Except the statement of the son of the co-accused namely Shridhar Baburao Kamapati showing that, on the say of the co-accused Baburao Kampati, he transferred some amount to present applicants and other co-accused,

nothing is on record to show the connection of the applicants with the alleged offence. The applicant is merely arrested on the basis of the statement of the co-accused and the single transaction of transferring the amount is not sufficient to show the involvement of the present applicant with the alleged offence. He submitted that as far as the names in the chit are concerned some fertilizers bags are also found in the said truck. Whether the applicant was supplier of the said fertilizer or the said contraband articles is not clear from the said chit, and therefore, merely on the basis of the chit the applicant cannot be arraigned as an accused in the alleged crime.

5. He submitted that in the light of the decision in the case of *Tofan Singh vs. The State of Tamil Nadu [(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 wherein it is observed 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 present applicants whose bail applications are under considerations.

6. *Per contra*, learned Additional Public Prosecutor 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 rigor under Section 37 of the said Act are, therefore, applicable. Moreover, the applicant is residing out of the State of Maharashtra, and therefore, there is every likelihood that he would not be available for trial and the prosecution case would affect and prays for rejection of the application.

7. Having heard learned counsel for the applicant, learned Additional Public Prosecutor for the State and perused investigation papers, it reveals that on conducting the raid, the commercial quantity of contraband article “ganja” of 1555 kilograms and 320 grams was found in possession of the co-accused which is seized by the police. During the investigation, the Investigating Officer recorded statements of the co-accused from which the name of the present applicant is revealed. To establish the link, the investigating agency placed reliance on the statement of other co-accused who is the Driver by profession working with the co-accused. From the statement of this witness it reveals that as per the direction of his employer he took the applicant and the family members in the car of the co-accused Ambadas and dropped them at Nanded. As far as present applicant is concerned it reveals that the present applicant has cut the contraband articles and transported it in the said truck.

But except the statement of the co-accused there is no material to connect the present applicant to show that he dealt with the contraband articles and he is the same person who has loaded the said contraband articles in the truck which was intercepted by the investigating agency. As far as the statement of the co-accused is concerned, it is repeatedly held by the Hon'ble Apex Court that the statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial for offences under the said Act. Recently also in the case of *Ajay Kumar Gupta Vs. Union of India [2024 SCC OnLine SC 2140]* wherein also the Hon'ble Apex Court has considered this aspect and held that a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial for offences under the NDPS Act.

8. The prosecution further relies upon one transaction which was between the son of the co-accused and the present applicant. Thus, as observed earlier and as rightly relied by the learned Counsel for the applicant that single transaction is not sufficient to show that this transaction was against the contraband articles.

9. In the teeth of the aforesaid decision, the arrest of the applicant on the basis of the confessional statement of the co-accused under Section 67 of the NDPS Act cannot form the basis for the accusation against him. In view of that and in the light of the observation and

considering the fact that except the confessional statement of the co-accused and the statement of the son of the co-accused showing the transaction between the applicant and other co-accused and as no other material is on record to connect the applicant with the alleged offence. From the single money transaction and from statement of the son of the co-accused, it cannot be inferred that money is transferred by the son of the co-accused to the present applicant against the transaction of the contraband articles.

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

(i) The application is allowed.

(ii) The applicant - Sheikh Rambabu @ Roshan Sheikh s/o Sheikh Baburao in connection with Crime No.383/2022 registered with police station Pardi, Nagpur for offences punishable under Sections 8(c), 20(b)(ii)(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, be released on bail on executing a PR.Bond in the sum of Rs.50,000/- with one solvent surety of the like amount.

(iii) The applicant shall attend the police station Pardi, Nagpur twice in a month i.e. on 1st and 15th of every month and the Investigating Officer shall record his presence.

(iv) The applicant shall furnish his Cell phone number and address with the address proof along with the names of his two relatives and their address with address proof.

(v) The applicant shall surrender his passport if he is having before the investigating agency.

(vi) The applicant shall not leave India without prior permission of the Court.

(vii) The applicant shall not directly or indirectly make any inducement and threat or promise to any witnesses acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the court or any police officer.

11. The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)