



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

CRIMINAL APPLICATION (ABA) NO.326/2024

Buddha Ram s/o Fattu Ram

..VS..

**Directorate of Revenue Intelligence, through its Intelligence Officer, KVL
Narasimham, Nagpur Regional Unit, 6th Floor, B Wing CGO Complex, Seminary
Hills, Nagpur**

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

Court's or Judge's Order

**Shri Ashish Fule, Counsel for the Applicant.
Shri Anand Deshpande, Counsel for the DRI/Complainant.
Shri A.G.Mate, Additional Public Prosecutor for the State.**

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 29/07/2024

PRONOUNCED ON : 02/08/2024

1. By this application, being moved under Section 438 of the Code of Criminal Procedure, the applicant seeks anticipatory bail in connection with Crime No.376/2022 registered with the Directorate of Revenue Intelligence, Nagpur (the DRI) for offences punishable under Sections 20, 27-A, 28, and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act).

2. As per allegations, on the basis of a complaint filed by the DRI before the District and Sessions Judge, Nagpur, the DRI received a secret information that "Ganja" is being illegally transported in a cargo vehicle bearing registration No.RJ-37-GA-1688

and the said vehicle is moving from States Andhra Pradesh to Rajasthan via Nagpur and is expected to reach “Mathni Toll Booth, Mouda”, Bhandara Road, at about 6:00 pm on 9.8.2022. Accordingly, the said vehicle was intercepted at the said toll booth and on interception, cannabis “Ganja” 217.82 kilograms in 47 packets was found. On interception of the said vehicle, co-accused Kishor Kumar and Pappu were found along with “Ganja”. They were asked to take the vehicle in the office of the DRI and accordingly, the vehicle was brought at the office of the DRI. However, they both jumped from the vehicle and fled away. During investigation, it revealed that the said vehicle is owned by co-accused Ganpatlal and the applicant and his son Shivraj Mahawar are dealing with transportation of said contraband article illegally. As the name of the applicant revealed during investigation, he approached this court for grant of anticipatory bail.

3. Learned counsel Shri Ashish Fule for the applicant, submitted that the applicant is public servant serving as Police Constable in the State Rajasthan and except statement of the co-accused, there is no material to connect him with the alleged offence. He submitted that merely because there are CDRs, showing his communication with co-accused Shivram Mahawar, who is son of the

applicant, the applicant is shown to be accused. Except this material, nothing is seized from the applicant. There is absolutely no evidence to connect him with the alleged offence. His custodial interrogation is not required. As such, the applicant be released on bail.

4. In support of his contentions, learned counsel for the applicant placed reliance on the decision of this court in the case of **Rhea Chakraborty vs. Union of India and anr, reported in 2020(4) BCR (Cri.) 30.**

5. *Per contra*, learned counsel Shri Anand Deshpande for the DRI, submitted that commercial quantity is recovered from the co-accused. During the investigation, statement of the co-accused is recorded from which involvement of the applicant revealed. During course of the investigation, it transpired that the applicant, who is the Head Constable in the State of Rajasthan, assisted his son in transporting the contraband article. CDRs collected during the investigation show communications between the applicant and the co-accused at the relevant time i.e. prior to the said vehicle was intercepted by officers of DRI. The communication between the co-accused is prior and after the raid. Thus, besides the statement of the co-accused, there is a material to connect the applicant with the crime. In view of that, the application deserves to be rejected.

6. Having heard learned counsel appearing for respective parties, it reveals that involvement of the applicant is on the basis of the co-accused as well as CDRs which show that there were communications between co-accused Shivraj Mahawar and the applicant. There is no dispute as to fact that the applicant and co-accused Shivraj Mahawar are father and son, but CDRs show that at the relevant time co-accused Shivraj Mahawar was at Andhra Pradesh and he loaded the contraband article in the said vehicle and had a communication with the applicant at the relevant time.

7. Thus, connection of the applicant reveals from the said CDR.

8. There is no dispute as to fact that the law is settled that statement of co-accused is relevant and admissible, in view of the decision of the Honourable Apex Court in the case of **Tofan Singh vs. The State of Tamil Nadu, reported in (2021)4 SCC 1** wherein it is observed that it was observed that a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be utilized in order to lend assurance to the court. The Honourable Apex Court, in the case of **Surinder Kumar Khanna vs. Intelligence Officer, Directorate of Revenue Intelligence**, reported in AIR 2018 SC 3574, also observed

that a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused. However, in the present case, besides the confessional statement of the co-accused, consistent phone calls between the applicant and the co-accused show involvement of the applicant in the crime. It is not the case of stray calls between both of them. The calls are made at the relevant time.

9. The Honourable Apex Court, in the case of **The State of Haryana vs. Samarth Kumar**, reported in 2022 LiveLaw (SC) 622, while considering application for cancellation of bail, which was granted on the basis of observation in the case of **Tofan Singh** *supra*, held that respondents may be able to take advantage of the decision in the case of **Tofan Singh** *supra*, perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial. To grant anticipatory bail in a case of this nature is not really warranted.

10. As far as the decision of this court in the case of **Rhea Chakraborty** *supra* is concerned, the application was for grant of regular bail and expression harboring was considered.

11. The considerations for grant of anticipatory bail are

different than that of bail under Section 439 of the Code of Criminal Procedure.

12. Here, in the present case, besides the confessional statement of the co-accused, CDRs show involvement of the applicant in the alleged offence.

13. In the light of observations of the Honourable Apex Court in cases *supra*, as no case is made out for grant of anticipatory bail, the bail application deserves to be rejected and the same is **rejected**.

The application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!