



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

CRIMINAL APPLICATION (BA) NO.619 OF 2024
(Ravi s/o Premdas Marodkar 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

Mrs. Maira Atees, Advocate for the applicant.
Ms T.H. Udeshi, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- SEPTEMBER 10, 2024

Heard learned Counsel for the applicant
through Video Conferencing.

2. The applicant came to be arrested on 09/10/2023 in connection with Crime No.722/2023 registered with the police station Badnera, District Amravati for offences punishable under Sections 20, 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act) and therefore, he seeks bail by this application.

3. The accusations against the applicant is on the basis of report lodged by Police Officer Gajanan Devidas Rajmallu who received a secret information about the illegal selling of Ganja by accused along with the other two persons. On the basis of information one white car bearing registration No.MH-02/DG/2911 was intercepted. Though complainant gave a signal to the said car to stop but the said car driver did not stop the car, therefore, it

was chased and the car was stopped near the Old Basti to Railway Station Road and the persons travelling in the said car manage to escape by taking advantage of the darkness. During search of the vehicle, 20 bundles of Ganja weighing around 108 kg was found along with the passbook in the name of the present applicant, his identity card and the other documents. The entire documents are seized along with the contraband articles by drawing the panchnama in presence of the panchas. The samples were obtained in presence of panchas thereafter the inventory was also conducted to the Magistrate. After completion of the investigation, the charge-sheet was filed.

4. Learned Counsel for the applicant submitted that as far as the involvement of the present applicant is concerned is only on the suspicion. There is no material collected by the Investigating Officer to show his involvement in the alleged offence. She further submitted that there is no compliance of Section 42 of the NDPS Act. She submitted that as far as the identity card which was seized by the investigating agency during the search is not sufficient to show the involvement of the present applicant in the alleged offence. She submitted that as there is no compliance of Section 42 of the NDPS Act, therefore, bar under Section 37 of the NDPS Act would not come into the way to release the present applicant on bail. In view of that, the applicant be released on bail.

5. Learned Additional Public Prosecutor for the State strongly opposed the application on ground that samples were drawn at the time of seizure in presence of panchas and the same were immediately sent to Forensic Science Laboratory for its analysis. She further submitted that as far as the compliance under Section 42 is concerned it is already complied. She pointed out from the investigation papers regarding the communication to the superior officer which shows that there is a substantial compliance of Section 42 of the NDPS Act. She further submitted that the contraband articles which are seized from the said vehicle are of a commercial quantity, and therefore, bar under Section 37 of the NDPS Act would attract. She submitted that along with the contraband articles the documents i.e. passbook of the present applicant and his identity card was seized. At this stage, it is sufficient material to show the involvement of the present applicant in the alleged offence. The settled position of law is that the substantial compliance of Section 42 is sufficient at this stage. She submitted that in view of that, the application deserves to be rejected.

6. I have heard learned Counsel for both the parties. Perused the investigation papers from which it reveals that the informant has received the secret information that in one white car bearing registration No.MH-02/DG/2911 the contraband articles were transported. Therefore, along with the raiding party

members and the panchas he intercepted the car. Though he has given the signal to the car driver to stop the car but the car driver has not stopped the car, therefore, it was chased and it was intercepted at Old Basti to Railway Station Road but by taking disadvantage of the darkness the persons who travelling in the said car fled away. During the search of the said car, 20 bundles of the wet “Ganja” was seized along with the documents which are in the name of the present applicant. As far as the compliance under Section 42 of the NDPS Act is concerned, the investigation papers shows that after receipt of the said information the informant has informed about the same to his superiors. Said communication sufficiently shows that the information was reduced to the writing and thereafter it was informed to the superior officer. As far as Section 42 of the NDPS Act is concerned, which reads as under:

“42. Power of entry, search, seizure and arrest without warrant or authorisation.-

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or

constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,-

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence

punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

7. Much emphasis has been placed on Section 42 of the NDPS Act on behalf of the applicant to contend that the raid conducted was entirely vitiated as there is no compliance of Section 42 of the NDPS Act. Twin requirements of Section 42(1) and 42(2) of the NDPS Act are; firstly, person conducting raid must be an empowered officer, superior to the rank of constable, and secondly, if raid was conducted between sunset and sunrise, the officer conducting such raid must report grounds of belief that if the raid was not so conducted, there would be chance of escape of offender and further that such recorded grounds for his belief shall be communicated to the superior officer within 72 hours.

8. In the context of these twin requirements, apparent conflict between two earlier judgments of the Honourable Apex Court was sought to be resolved in the case of *Karnal Singh vs. State of Haryana [(2009) 8 SCC 539]*. The Constitution Bench of the Honourable Apex Court considered extent of mandatory nature of requirement of Section 42 of the NDPS Act and in what circumstances accused may not get benefits of mere non compliance unless it was established that he suffered prejudice due to such non compliance. After considering scope of Section 42 of the NDPS Act, the Bench concluded that although twin requirement of Section 42 of the NDPS Act requires to be complied with and total non-compliance of the same was impermissible, if there was some delay in

compliance which could be explained satisfactorily by placing material on record, such compliance be acceptable.

9. Thus, if the aforesaid judgment is taken into consideration, facts of the present case shows the informant has given the information to his superior. The raid was conducted by the officer of the rank of Police Inspector. As regards proviso to Section 42(1) of the NDPS Act, it was submitted that documents on record did indicate that the superior officer was not informed but the communication on record is sufficiently shows that superior officer was informed. As far as the other compliance is concerned the samples are taken in presence of the panchas and inventory was also carried out.

10. Chapter-V of the NDPS Act pertains to procedure. Section 51 contained in the said Chapter provides that provisions of the Code of Criminal Procedure shall apply insofar as they are not inconsistent with provisions of the NDPS Act to all warrants issued and arrests, searches and seizures made under the NDPS Act.

11. Thus, unless there is anything contrary provided in the NDPS Act, in relation to all warrants issued and arrests, searches and seizures carried out by investigating agency during course of investigation, provisions of the Cr.PC. would apply.

12. Admittedly, samples were not obtained before the panchas and there is due compliance as far as the search and seizure is concerned.

13. At this stage, when the Court is concerned with question of granting or refusing bail, the same cannot be the sole consideration. However, consideration should be viewed in the light of rigor of Section 37 of the NDPS Act. In view of Section 37 of the NDPS Act, bail can be granted if court is satisfied i.e. applicant is not likely to commit offence while on bail and the bail can be granted if the court is satisfied that there are reasonable grounds for believing that applicant is not guilty of offence.

14. Thus, satisfaction contemplated regarding accused being not guilty has to be 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 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 aspect is *sine quo non* for grant of bail.

15. In the light of the above well settled legal position, there is sufficient material on record to hold that

the applicant is involved in crime. In view of the rigor under Section 37 of the NDPS Act, I do not find merits in submissions of learned Counsel for the applicant and there are reasons to believe that the applicant is guilty of said offences.

16. In this view of the matter, the application deserves to be rejected and the same is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*