



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

CRIMINAL APPLICATION (ABA) NO. 454 OF 2024

Mahalaxmi S/o Nagaraju Cheluboyina
Vs.

State of Maharashtra, Thru. PSO, PS Pardi, Tq. & District – Nagpur.

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

Court's or Judge's Orders.

Mr. Anil S. Mardikar, Senior Advocate a/by Mr. Harsh
Kanjwani & Mr. Digvijay Singh, Advocate for applicant.
Mr. Sneha Dhote, APP for non-applicant/State.

CORAM : SMT. URMILA JOSHI PHALKE, J.

DATE : 08.08.2024

Heard.

2. By this application, the applicant is seeking anticipatory bail in connection with Crime No.383/2022, registered with Police Station Pardi, District – Nagpur, for the offences punishable under Sections 8(c), 20(b)(ii), 25 & 29 Narcotic Drugs and Psychotropic Substances Act, 1985, (hereinafter referred as the 'NDPS' Act).

3. The applicant is apprehending arrest at the hands of police as the accusation against the present applicant is on the basis of report lodged by the Assistant Police Inspector namely Arun Bakal

dated 15.11.2022, who was informed by Police Inspector of Crime Branch regarding a secret information relating to transportation of the contraband truck bearing registration No.AP-16/PA-7349. The said contraband was being transported from Jagdalpur (Chattisgarh) to Bhandara via Nagpur. Accordingly, the complainant along with the Police Officers and Panchas rush to the Pardi Chowk, Bhandara road near Jai Bhole Dhaba, Kapsi to restrain the vehicle. The complainant and raiding staff restrained the said vehicle and inspected goods located in the truck. There were certain bags of fertilizers and beneath of the said bags, 72 bags were found containing 1555 kgs and 320 grams 'Ganja' which was seized by the Police in presence of the Panchas. During personal search of the accused Someshwar Rao @ Bujji Narsimhamarti Kotipillai and co-accused Balem Nanaji @ Nani Padyakapu Balem, two mobile phones were seized and one piece of paper having names of five-seven 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 allegation, Investigating Agency found that there was contact between the present applicant and the other co-

accused. It is further alleged that it was the present applicant, who has placed the order for the Ganja and made available the truck to transport the same. On the basis of the said, the applicant was arraigned as an accused.

4. Mr. Mardikar, learned Senior Counsel for the applicant submitted that applicant is neither owner of the truck nor there is any nexus with the said transaction of the contraband except the allegation by the investigating agency in the summary of the charge-sheet that present applicant has placed the order and made available the truck for transportation of the Ganja. There is absolutely no material to connect him with the alleged documents. He submitted that there is no money transaction between the present applicant and the other co-accused nor there is any telephonic communication between the present applicant and the other co-accused. He submitted that as per the reply filed by the State, they requires the custody of the present applicant for seizure of the mobile phone, who obtain the CDR but, the mobile phone is not required for obtaining the CDR. He also invited my attention towards the communication by the Investigating Officer to his Superiors for obtaining

the CDR regarding the mobile number of the present applicant. He submitted that even accepting the contention of the State that there is a statement of the co-accused, which is not sufficient to connect the present applicant with the alleged offence, as in view of the judgment of the Hon'ble Apex Court in the case of *Tofan Singh Vs. State of Tamil Nadu* reported in *(2021) 4 SCC 1*, the statement of the co-accused is not admissible.

5. In support of his contention, he further placed reliance on the order of the Hon'ble Apex Court in the case of *Vijay Singh Vs. State of Haryana* wherein the Hon'ble Apex Court has considered that allegation in the FIR are that 1.7 kg Poppy Straw was recovered from the co-accused. The petitioner concededly was not present at the spot but was named by the accused. That apart, there is no other material to indicate the petitioner, the prosecution urges that another case in the allegation of commission of offence under NDPS Act are pending against the petitioner.

6. Having regard to the circumstances, the petitioner was released on anticipatory bail therein. He submitted that here also except the allegation

there is absolutely no material to connect the present applicant with the alleged offence. He further submitted that the object of Section 438 is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The gravity of the offence is an important factor to be taken into consideration while granting such anticipatory bail, so also the need for custodial interrogation, but these are only factors that must be borne in mind that the Courts concerned while entertaining a petition for grant of anticipatory bail. He submitted that considering the nature of the evidence, the applicant has made out a case for grant of anticipatory bail.

7. Per contra, learned APP for the State strongly opposed the said application on the ground that commercial quantity of the contraband articles are found in possession of the co-accused. The rigor under Section 37 of the said Act, therefore applicable. Moreover, the applicant is not resident of the State of Maharashtra and therefore, there is likelihood that he would not be available for trial which would affect the case of the prosecution and prays for rejection of the application. She also placed reliance on the decision of the Apex Court in the case of *State of Haryana Vs. Samarth Kumar*,

wherein the Hon'ble Apex Court has considered the aspect of the anticipatory bail and observed that the decision in Tofan Singh Vs. State of Tamil Nadu, perhaps at the time of arguing the regular bail application or at the time of final hearing, after conclusion of the trial.

8. After hearing the learned Senior counsel for the applicant and learned APP for the State, perused the investigation papers, it reveals that on conducting the raid commercial quantity of contraband article 'Ganja' of 1555 Kgs and 320 gms was found in possession of the co-accused which is seized by the police.

9. During the investigation, the Investigating Officer recorded the relevant statement, the arrested accused were also interrogated. As far as the involvement of the present applicant is concerned, except the allegation in the charge-sheet, no other material was collected by the Investigating agency to show the coalition between the present applicant and the other co-accused. Even, there is no statement of the co-accused also showing any connection between the present applicant and the other co-accused. As far as the allegation by the

Investigating agency is concerned, that it is the present applicant, who has placed the seized Ganja and also made available the truck for transportation of the same except the bare words there is no other material to show this connection between the present applicant and the other co-accused.

10. Admittedly, in view of decision of the Hon'ble Apex Court in the case of *State of Haryana Vs. Samarth Kumar*, wherein the Hon'ble Apex has referred the judgment of ***Tofan Singh Vs. State of Tamil Nadu reported in (2021) 4 SCC 1***, wherein the Hon'ble Apex Court has considered that as far as the decision in *Tofan Singh Vs. State of Tamil Nadu* is concerned, it would be helpful for arguing the regular bail application or at the time of final hearing after conclusion of the trial.

11. In *Tofan Singh Vs. State of Tamil Nadu*, the Hon'ble Apex Court has held that the confessional statement recorded under Section 67 will remain inadmissible in the trial of an offence under the said Act against the co-accused. In the case of ***State (by NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta and anr. reported (2022) 12 SCC 633***, wherein also by referring the judgment of *Tofan*

Singh Vs. State of Tamil Nadu, it is held that the confessional statement recorded under Section 67 will remain inadmissible in the trial of an offence under the said Act.

12. In the teeth of the aforesaid decision, if the facts of the present case and the evidence collected against the present applicant is concerned, even there is no statement of the co-accused showing the involvement of the present applicant in the alleged offence. Besides this, the CDR reports are not collected to show the involvement, there is no money transaction between the present applicant and the other co-accused. Thus, in view of the order passed by the Hon'ble Apex Court in the case of *Vijay Singh Vs. State of Haryana in SLP No.1266/2023*, as there is absolutely no evidence, the applicant has made out the case for enlarging the anticipatory bail.

13. In the light of the above observations and considering the fact that except the bare words mentioned in the charges-sheet, no evidence is collected in support of the said statement by the Investigating Officer. The applicant has made out a case for grant of anticipatory bail and as there is

insufficient material available against the applicant. Therefore, rigor under Section 37 of the Act and after recording the satisfaction that at this stage, there is no material to held the present applicant guilty for the offence punishable under the provisions of the NDPS Act. The application of the applicant deserves to be allowed. Hence, I proceed to pass the following order :

ORDER

- (a) The criminal application is allowed.
- (b) The applicant **Mahalaxmi s/o Nagaraju Cheluboyina** shall be released on anticipatory bail in the event of his arrest in connection with Crime No.383/2022, registered with Police Station Pardi, District – Nagpur, for the offences punishable under Sections 8(c), 20(b)(ii), 25 & 29 Narcotic Drugs and Psychotropic Substances Act, 1985, on executing PR bond in the sum of Rs.50,000/- with one solvent surety in the like amount.
- (c) The applicant shall attend the concerned Police Station Pardi, Nagpur, once in a week on Sunday between 10:00 a.m. to 1:00 p.m. till filing of the charge-sheet against him.

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

(e) The applicant shall surrender his passport if he is having before the Investigating Agency. The applicant shall not leave the India without prior permission of the District Court, Nagpur.

(f) The applicant shall not directly or indirectly make any inducement, threat or promise to any witnesses acquainted with the facts of the case so as to decide him/her from disclosing such facts to the Courts and any Police Officers.

(g) The observations are primary in nature only for the consideration of it and the trial Court shall not influence by the same.

14. The Criminal application is disposed of accordingly.

(SMT. URMILA JOSHI PHALKE, J)