



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

CRIMINAL APPLICATION (BA) NO.1022 OF 2024

Alok Ramvilas Singh

..VS..

**State of Maharashtra, thr.PSO PS Bori, Nagpur Rural,
Taluka and District Nagpur**

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

Court's or Judge's Order

**Shri Anil S.Mardikar, Senior Counsel assisted by Shri Ved
Deshpande, Advocate for the Applicant.
Shri S.A.Ashirgade, Additional Public Prosecutor for the
NA/State.**

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 02/12/2024

PRONOUNCED ON : 05/12/2024

1. By this application under Section 483 of the
Bhartiya Nagrik Suraksha Sanhita, 2023, the applicant
seeks regular bail in connection with Crime No.15/2021
registered with the non-applicant/police station for
offences punishable under Sections 20, 22, 29, 25, and
27(A) of the Narcotic Drugs and Psychotropic
Substances Act, 1985 (NDPS Act).

2. The applicant came to be arrested on
31.1.2024 and since then he is in jail.

3. The crime was registered on the basis of a report lodged by Police Sub Inspector Battulal Pande. As per his report, he received a secret information, when he was on patrolling duty on 11.1.2024, that in a container, proceeding from Chandrapur to Nagpur, bearing registration No.HR-55/S-2346, contraband article "Ganja" is transported. He immediately communicated the said information by taking an entry to Higher Authorities. Accordingly, the vehicle was intercepted. On an enquiry, driver of the vehicle disclosed his name as Shabbir Jumme Khan and other person present in the vehicle disclosed his name as Munawwar Azad Khan. The vehicle was owned by Hafiz Jumme Khan. On search of the vehicle, plastic bag containing contraband was found and it revealed from the enquiry that on instructions of the owner, they were transporting the contraband from Vishakhapatnam to Bihar, via Nagpur. Accordingly, an enquiry was conducted and during the investigation, involvement of the applicant as supplier was revealed. On the basis of the same, the crime was registered against the applicant also.

4. Heard learned Senior Counsel Shri Anil S.Mardikar for the applicant and learned Additional Public Prosecutor Shri S.A.Ashirgade for the State.

5. Learned counsel for the applicant submitted that as far as the applicant is concerned, he was not found on the spot. Nothing was seized from his possession. Merely on the basis of statement of co-accused, he was shown to be involved in the said crime. The entire reliance of the prosecution was on statement of accounts and CDRs. He submitted that nothing is on record to show either the applicant was in contact with other co-accused or there was any reason for the applicant to deal with the contraband article found in possession of co-accused. Thus, rigour under Section 37 of the NDPS Act is not attracted. In view of that, the applicant be released on bail.

In support of his contentions, learned Senior Counsel placed reliance on following decision:

1. Criminal Application (BA) Nos.356/2024 with 366/2024 decided by this court on 4.7.2024;

2. Criminal Application (BA) No.1043/2023 decided by this court on 11.12.2023;

3. Criminal Application (BA) No.478/2024 decided by this court on 26.8.2024;

4. Criminal Application (BA) Nos.1130/2023 decided by this court on 30.4.2024;

5. Criminal Application (BA) No.454/2024 decided by this court on 8.8.2024, and

6. Criminal Appeal No.878/2019 (Ajay Kumar Gupta vs. Union of India), decided by the Hon'ble Apex Court on 22.8.2024.

6. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the application on ground that there were consistent transactions reflecting from account statement of the applicant by which it revealed that the applicant transferred amounts on various occasions in account of the truck owner. He specifically pointed out to the contention of learned Senior Counsel for the applicant that said money transactions are due to the business between the applicant and the truck owner who is running transport business. He submitted that as far as the applicant is running business is concerned, the same is not

supported by any substantial material. On the contrary, investigation papers as well as the title cause of the application show that the applicant is doing labour work. So, no reasonable ground came before the court satisfying the transaction between the applicant and other co-accused.

7. After hearing both sides and perusing investigating papers, it reveals that on receipt of the secret information, the truck was intercepted wherein the driver and cleaner were found in possession carrying the contraband weighing 496.300 kilograms, which is a commercial quantity. Admittedly, the applicant was not found in possession of the said contraband article. As far as statement of co-accused is concerned, admittedly, it is not admissible 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.**

8. Besides the statement of the co-accused, another material evidence collected by the investigating agency is money transactions between the applicant and

the truck owner. An attempt was made to show that the said money transactions were due to other reason as the applicant is also running business and the co-accused has his transport business. Out of the said transport business, there were money transactions. This fact is not supported by any material or investigation papers. The title cause of the application itself shows that the applicant is doing labour work. There are consistent transactions between the applicant and other co-accused, which show that the applicant transferred amounts in account of the co-accused and truck owner on various occasions and amounts were not meager amounts. The said account statements are sufficient to show live link between the applicant and other co-accused. It is not the case of one or two transactions, but it is a case of multiple transactions between two accused.

9. In the light of the above, at this stage, involvement of the applicant reveals.

10. In view of rigour under Section 37 of the NDPS

Act, bail can be granted if court is satisfied that reasonable grounds of believing that accused is guilty of offence that is likely to commit while on bail. The expression used in Section 37(1)(b)(ii) is “reasonable grounds”. The expression means something more than *prima facie* grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds, but the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a

finding of not guilty.

11. In the present case, at this stage, the material collected during the investigation is sufficient to show the live link between the applicant and other co-accused, who is the truck owner.

12. At this stage, there is no reasonable ground to record that the applicant is not guilty of such offence.

13. Considering the commercial quantity and in view of rigour under Section 37 of the NDPS Act, the application for bail deserves to be rejected and the same is **rejected**.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!