



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

CRIMINAL APPLICATION (BA) NO. 1130 OF 2023

Subhash s/o Tukaram Pandule and another V/s The 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, counsel for the applicants.

Mrs. H.N.Prabhu, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 30/04/2024.

1. Heard.
2. By this application, the applicants are seeking bail in connection with Crime No.383/2022 registered with the non-applicant/police station for offences punishable under Sections 8(c); 20(b)(ii), and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the said Act).
3. The applicants are arrested on 17.11.2022 and since then he is in jail.
4. As per accusations against the applicants, 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 320 grams “ganja” which was seized by the police in presence of panchas. During a 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 5-7 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. It is further alleged that some money transactions were exchanged between the co-accused Baburao Viraswami Kamapati and the present applicants and other co-accused Sheikh Rambabu @ Roshan Sheikh, and accused No.10 Yelluri Shrinu @ Yelluri Arun.

5. Learned Counsel Mr. A.K. Bhangde for the applicants, submitted the applicants 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.

6. He further submitted that during the raid, the Investigating Officer has seized one chit from the driver of the truck, on which the names of the present applicants and other persons were mentioned. If the names in the chit are taken into consideration, all of them are not made an accused. It is the matter of the record that during the raid, in the said truck, some goods like fertilizers bags are also seen by the Investigating Agency. Therefore, the names of the present applicants in the chit as regards to the buyer of the fertilizers cannot be ruled out. He submitted that there are no criminal antecedents against the present applicants. So there is no material to show that the applicants are dealing with the contraband articles as a business. The applicants are arrested merely on the basis of statement of the co-accused and the transaction took place from phone-pay between the son of co-accused Kamapati and the present applicants. He further submitted that now it is well settled that the statements of the co-accused showing the involvement of another accused is not admissible.

7. In support of his contentions, he placed reliance on the decision of in the case of *Tofan Singh vs. The State of Tamil Nadu*, reported in (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 2.3.2022 and submitted 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.

8. 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 applicants are residing out of Nagpur i.e. Beed and therefore, there is every likelihood that he would not be available for trial and the prosecution case would affect. She further submitted the names of the present applicants are revealed from the chit which was seized during the raid, which shows the connection of the present applicants with the alleged offence. She submitted that the names mentioned in the chit and the money transaction between the son of the co-accused and the present applicants sufficiently shows the connection between them. In view of that, the application deserves to be rejected.

9. Having heard learned counsel for the applicants, 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 possessions 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 applicants revealed which disclosed that the applicants are connected with the alleged offence. During the raid, one chit was also seized from the possession of the driver of the truck, wherein the names of the present applicants are mentioned as buyers. Admittedly, while conducting the raid on interception of the truck, the goods like fertilizers were also lying in the said truck, and beneath of the said fertilizers, the said contraband articles were found. As far as the present applicants are concerned, admittedly there are no criminal antecedents against them to show the involvement of the present applicants in similar types of the offence. Admittedly, the names of the suppliers and transports are also mentioned in the said chit and all the names are not added as an accused in the present crime. If the prosecution placed reliance on the said chit, then the suppliers and the transporters should have been an accused in the present crime.

10. Thus, the entire prosecution regarding the involvement of the present applicants to connect them with the alleged offence is on the basis of the said chit. The names of the present applicants are mentioned as buyers in the said chit but on the basis of the said recitals, it cannot be presumed that they are the buyers of the contraband articles. Besides the said chit, there is a money transaction between the co-accused

and the present applicants. The statement of the son of the co-accused shows that on the say of his father, he has transferred some amount in the account of the present applicants, but he is not aware against the transaction, the said amount is transferred. The statement of one Sominath Janardan Udawant is also recorded, which shows that present applicants have provided vehicles to the co-accused when he had been to Maharashtra to take the darshan at 'Shirdi' and Shani Shingnapur. Thus from the statement of these witnesses, only it reveals that one vehicle was provided to the co-accused by the present applicants, and their names are mentioned in the chit which was found along with the drivers. As far as their connection with the contraband articles, there is no material to show that they are dealing with the contraband articles by purchasing the same, as no criminal antecedents are registered against them.

11. Perusal of the record shows that apart from the above aforesaid transaction, admittedly, there is no a single material to show that they are involved in the crime. In view of the statements and statement of bank accounts, admittedly, the money transaction appears to be there. However, it would not be sufficient to connect the applicants holding the said money transaction is regarding supplying of the contraband article "ganja".

12. At this stage, it would not be proper to record a finding that the applicants is involved in the transaction with the co-accused as far as the seized contraband article is

concerned. However, the said aspect is sufficient to record satisfaction of conditions contemplated under Section 37 of the said Act.

13. The Honourable Apex Court in the case of ***Tofan Singh vs. The State of Tamil Nadu*** (*supra*) held that the statement recorded under Section 67 of the said Act cannot be used as a confessional statement in the trial for offences under the said Act. The Honourable Apex Court in paragraph No.59 observed that the marginal note to Section 67 indicates that it refers only to the power to “call for information etc”. It is further held that the said statement recorded under Section 67 of the said Act cannot be used as confessional statement and the accused are released on bail.

14. In the case of ***State (By NCB) Bengallure vs. Pallulabid Ahmad Arimutta and anr, reported in (2022)12 SCC 633*** along with the connected matter wherein also it has been held that in clear terms in ***Tofan Singh vs. The State of Tamil Nadu*** (*supra*) that confessional statement recorded under Section 67 will remain inadmissible in the trial of an offence under the said Act.

15. In the teeth of the aforesaid decision, the arrest of the applicants on the basis of the chit found along with the co-accused and the money transaction cannot form basis their involvement in the alleged offence.

16. In the light of the above observations and considering the fact that except the chit and the transaction

between the applicants and co-accused, no other material is on record to connect them with the alleged offence. From the money transaction and from statement of the son of the co-accused, it cannot be inferred that money is transferred from the co-accused against the transaction of the contraband articles.

17. At this stage, in the light of the insufficient material available against the applicants and in view of the rigor of Section 37 of the said Act, after recording the satisfaction, the application of the applicants deserves to be allowed. Hence, I pass following order:

ORDER

- (a) The criminal application is **allowed**.
- (b) The applicant (1) – **Subhash s/o Tukaram Pandule** (2) **Ambadas s/o Raghu Zanje** shall be released on bail, in connection with Crime No.383/2022 registered with the non-applicant/police station for offences punishable under Sections 8(c); 20(b)(ii), and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on his executing a P.R.Bond in the sum of Rs.50,000/- each with one solvent surety of the like amount.
- (c) The applicants shall attend the concerned Police Station twice in a month on 1st and 15th of every month between 10.00 a.m. to 1.00 p.m., and also shall attend the proceedings before the Court

without seeking any exemption unless there are exceptional circumstances.

- (d) The applicants shall furnish their cell phone numbers and address with the address proof.
- (e) The applicants who are resident of Beed, shall attend Local City Police Station at Beed once in a week on Sunday between 10.00 a.m. to 01.00 p.m and the Police Station Officer, City Police Station Beed shall record their presence.
- (f) The applicants shall not directly or indirectly make any inducement and threat or promise to any witnesses acquainted with the facts of the case.
- (g) The learned trial Court shall not influence by the above observation made by this Court which are only for the purpose of bail.

The criminal application stands **disposed of**.

[URMILA JOSHI-PHALKE, J.]