



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

CRIMINAL APPLICATION (BA) NO.568/2024

Shivraj s/o Buddharam Mahawar

..VS..

**Directorate of Revenue Intelligence (DRI), through KVL Narasimham, Regional
Unit, CGO Complex, 6th Floor, B-Wing, Seminary Hills, Nagpur Regional Unit,
Nagpur and**

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

Court's or Judge's Order

Shri A.K.Bhangde, 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 439 of the Code of Criminal Procedure, the applicant seeks regular bail in connection with Special Criminal Case (NDPS) No.416/2023 registered with the non-applicant No.1/Directorate of Revenue Intelligence, Nagpur (the DRI) for offences punishable under Sections 8(c), 20, 27-A, 28, and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act).

2. The applicant is arrested on 18.3.2024 and since then he is in jail.

3. The accusations against the applicant are on the basis of a complaint filed by the Directorate of Revenue Intelligence (DRI). As per the complaint, it is alleged that they received a secret information that contraband article “Ganja”, which is a narcotic drug, is being illicitly transported by secreting and concealing the same 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, a team of five officers and other raiding party members intercepted the said vehicle at the said toll booth in presence of two panchas. Two persons were travelling in the said vehicle. The officers introduced themselves to the said two persons and also shown their identity cards. Driver of the said vehicle introduced himself as Kishor Kumar and another person introduced himself as Pappu. On being searched the cargo portion as well as other portion of the said vehicle, they found a mobile phone belonging to Pappu, five keys, ATM Cards, Aadhar Cards, ATM Cards of Bank of Baroda and State Bank of India. In the said vehicle, 47 packets of “Ganja” weighing 217.82 kilograms were found, which were seized by following a due process of law in presence of panchas. The officers of the DRI followed mandatory provisions and obtained samples and the samples were forwarded to

the Chemical Analyzer. During investigation, it revealed that the applicant is mastermind of the entire transportation, who loaded the said contraband in the said vehicle at Andhra Pradesh for transporting the same in the Rajasthan. The ATM Cards and Identity Card of the applicant were retrieved. During investigation, involvement of the applicant was revealed and he was arrested on 18.3.2024.

4. Learned counsel Shri A.K.Bhangde for the applicant, submitted that the applicant was not travelling in the said vehicle with the co-accused. He is also not named in the seizure panchanama and nothing was seized from his possession prior or after his arrest. The entire case is based on CDRs from 5.5.2022 to 30.11.2022. The said CDRs are not sufficient to show involvement of the applicant in the alleged offence. The applicant is a businessman dealing in marble stone and granite and he is not at all aware about the alleged transportation of the contraband from Andhra Pradesh to Maharashtra, Orissa, and Rajasthan. Now, investigation is already completed and chargesheet is already filed and further incarceration of the applicant in jail is not required.

5. In support of his contentions, learned counsel for the applicant placed reliance on following decisions:

1. **State of Karnataka vs. Pallulabid Ahmad Arimutta and anr**, reported in 2023 ALL SCC (Cri) 544;

2. **Criminal Application (BA) No.713/2023 (Mohd.Shahjad Mohd.Shafi vs. State of Maharashtra)** decided by this court on 4.12.2023;

3. **Shashikant Prabhu vs. Rahul Saini and anr**, reported in 2020 SCC OnLine Bom 11226;

4. **Sujit Tiwari vs. State of Gujarat**, reported in AIR 2020 SC 667, and

5. **Vikas Babbarsingh Itkam vs. The State of Maharashtra**, reported in 2023 ALL MR (Cri) 4020.

6. *Per contra*, learned counsel Shri Anand Deshpande for the DRI submitted that during investigation, it revealed that the applicant is mastermind of the said transportation. The contraband article found is of a commercial quantity. The applicant, who is kingpin, hatched conspiracy with other co-accused and obtained the said contraband article from the State of Andhra Pradesh. During investigation, the investigating agency collected details to show that the applicant travelled from Andhra Pradesh to Delhi. Plight Details show that within 6 hours span, he travelled from the Maharashtra to Andhra Pradesh and Andhra Pradesh to Delhi. Not only this, CDRs between the applicant and co-accused Kishor Kumar and between the applicant and co-accused Ganpatlal, who is owner of the said vehicle, so also money transaction show that the applicant has not

only transferred amount to Ganpatlal but also transferred to other co-accused Pappu, who is not employee of the applicant. The applicant has also received the amount from Kishor Kumar, the other co-accused, who was found along with the said vehicle. Thus, CDRs and money transactions between the applicant and other co-accused sufficiently show involvement of the applicant in the alleged offence. In view of rigor under Section 37 of the NDPS Act, the application deserves to be rejected as at this stage, there is a sufficient material to show that the applicant is guilty of the offence and there is no reason to believe that if he is released on bail, he would not commit an offence while on bail.

7. After hearing learned counsel appearing for respective parties, it reveals that on interception of the said vehicle, commercial quantity of contraband article weighing 217.82 kilograms was seized by following provisions under Sections 42 and 50 of the NDPS Act. On interception of the said vehicle, two persons were found namely Kishor Kumar and Pappu, who are allegedly accused Nos.1 and 2. The said vehicle is owned by accused No.3 Ganpatlal. On interception of the said vehicle, ATM Card of the Axis Bank in the name of the applicant was found in the said vehicle. During investigation, the investigating officer collected bank account

statement of the applicant maintained in the HDFC Bank at Rajasthan. The transactions show that on several occasions, he transferred some amount to the account of co-accused Ganpatlal. It was not a case of stray transaction, but on multiple occasions various amounts were transferred in the account of co-accused of Ganpatlal prior and after interception of the said vehicle also. Not only this, there is a transaction between the applicant and co-accused Kishor Kumar. From the account of Kishor Kumar, amount Rs.20,000/- was transferred in the account of the applicant on 18.7.2022 and amount Rs.4000/- on 20.7.2022. Some amounts were also transferred to co-accused Pappu.

8. Thus, several transactions took place between the applicant and other co-accused. It further reveals from investigation papers that there were calls between the applicant and absconding accused on 12.8.2023, 15.8.2023, 20.8.2023 and so on. Thus, there were several calls between absconding accused Kishor Kumar and the applicant, between the applicant and co-accused Ganpatlal, and four calls between the applicant and co-accused Buddha Ram. Thus, there are consistent calls between them. Though the complaint is filed by the DRI in July 2023, the applicant is arrested on 18.3.2024. Still, the other accused are absconding and investigation as to their

involvement is still in progress.

9. In the case of **State of Karnataka vs. Pallulabid Ahmad Arimutta and anr** *supra*, as relied upon by learned counsel for the applicant, it is considered that the CDRs of some of accused or allegations of tampering of evidence on the part of one of respondents is an aspect that will be examined at the stage of trial.

In the said decision, involvement was on the basis of statement of co-accused.

10. Here, in the present case, direct involvement is revealed from investigation papers.

11. In the case of **Shashikant Prabhu vs. Rahul Saini and anr** *supra*, there was no cogent evidence to establish that applicant therein was involved in transportation of drug.

12. In the case of **Sujit Tiwari vs. State of Gujarat** *supra*, involvement was on the basis allegation of co-accused and, therefore, the applicant therein was released on bail.

13. As far as the applicant is concerned, there is a sufficient evidence against him to show his involvement in the offence.

14. In view of rigor under Section 37 of the NDPS Act, bail

can be granted if the court is satisfied that reasonable grounds for believing that accused is not guilty of offence and he is not likely to commit offence while on bail.

15. Thus, satisfaction contemplated regarding the 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 and probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision would require 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 aspects is *sine qua non* for grant of bail.

16. In the light of the above well settled legal position, at this stage, there is a sufficient material on record to hold that the applicant is involved in the crime. In view of the rigor under Section 37 of the NDPS Act, I do not find any error in submissions of learned counsel for the applicant and there are reasons to believe that the applicant is guilty of the said offence.

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

The application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!