



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

CRIMINAL APPLICATION (ABA) NO.344 OF 2024

(Sayyad Ayaz Jalil Pirzada @ Jabbar Vs. The Intelligence Officer and anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. J.R. Rathor, Advocate for the applicant.
Mr. A.S. Deshpande, Advocate for respondent No.1.
Mrs. M.A. Barabde, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- AUGUST 9, 2024

The applicant is apprehending arrest at the hands of police in connection with crime F. No. DRI/MZU/NRU/INT-113/ENQ-41/2023 registered with Directorate of Revenue Intelligence, Nagpur Regional Unit, Nagpur for the offences punishable under Sections 20, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the "NDPS Act").

2. The accusation against the present applicant is on the basis of the statement of the co-accused. It reveals that the complaint was filed by the Directorate of Revenue Intelligence on an allegation that the secret information was received by them as to the illicit possession, sale, purchase, transport and export inter-state of Cannabis also known as Ganja, and therefore, they have intercepted the vehicle Tractor-Trolley which was moving towards Nagpur from Ranjnandgaon (Chhattisgarh). On interception of the said vehicle, the Ganja weighing

211.12Kg from the co-accused. After following the due procedure, which is mandatory in nature the co-accused were arrested. The samples were drawn accordingly in presence of the panchas and inventory was also carried out. After completion of the investigation, the complaint was filed along with the investigation papers.

3. Learned Counsel for the applicant submitted that as far as the present applicant is concerned, his involvement is only on the basis of the statement of the co-accused. The said statement of the co-accused is not admissible in view of the decision of the Honourable Apex Court in the case of *Tofan Singh v/s State of Tamil Nadu, reported in (2021) 4 SCC 1*. He Submitted that besides the statement of the co-accused there is absolutely no material against the present applicant with the alleged offence, there are no criminal antecedents. He also invited my attention towards the statement of the co-accused namely Sadik Hussain Bikan Shah and submitted that in his statement also there is no reference of the name of the present applicant. Thus, he submitted that there is absolutely no evidence to connect him with the alleged offence. In view of that, the interim protection granted to the applicant deserves to be confirmed.

4. Learned Counsel for respondent No.1 submitted that on interception of the tractor

commercial quantity of the Cannabis were seized by the respondent-officer. On examination of trolley carefully, it was found to contain an especially built-in cavity underneath, which had 211.22 Kgs of a substance carefully packed in 100 packages. On testing the same with the NDPS field testing kit (Drug Detection Kit) which resulted into affirmative and it reveals that it is a narcotic drug under the NDPS Act. Thereafter the samples were obtained. The statements of the co-accused are recorded and during investigation it revealed that the present applicant is the financier giving finance to the other co-accused. The investigating agency has collected the account transaction details of the account of the present applicant and from which it reveals that there are several transactions between the present applicant and the other co-accused. The statement of the present applicant is also recorded by the investigating agency from which it reveals that he has transferred the amount of Rs.1.00 lakh on 22/08/2023 in the bank account of the co-accused Arshad Rashid Momin who is the mastermind of the said crime. He has also transferred the amount of Rs.1.00 lakh to his cousin brother Bukran Latif Momin. His statement further shows that he has also transferred the some amount in the account of Nawaz Sheikh and Sadik Shah.

5. Thus, learned Counsel submitted that it is not a case of a said transaction but repeatedly there were transactions between the present applicant and the other co-accused. Thus, the connection of the present applicant with the other co-accused is revealed from the investigation. He submitted that as far as the Toofan Singh (supra) is concerned, it is observed by the Honourable Apex Court in the case of the ***State of Haryana Vs. Samarth Kumar [2022 LiveLaw (SC) 622]*** that the respondents may be able to take advantage of the decision in Tofan Singh (supra) perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial. It is specifically observed by the Hon'ble Apex Court to grant anticipatory bail in a case of this nature is not really warranted and the bail granted to the applicant therein by the High Court was cancelled. There is no dispute as to the well settled legal position is concerned that the statement under Section 67 of the NDPS Act. In view of the decision of Tofan Singh (supra) is not admissible against the co-accused however, considering the observation of the Hon'ble Apex Court that the order of Special Court granting regular bail to the respondent shows that the said order was passed in pursuance of the anticipatory bail granted by the High Court, therefore, the same cannot be a ground to hold that the present appeals have become infructuous. It is further observed that the respondents may be able to take advantage of the decision in Tofan

Singh (supra) perhaps at the time of arguing the regular bail application. To grant anticipatory bail in a case of this nature is not merely warranted. In view of the observation of the Hon'ble Apex Court here also there is a material to show that there was a connection between the present applicant and other co-accused and considering the association of the present applicant it reveals that there are various transactions between the present applicant and other co-accused which is sufficient to show the *prima facie* involvement of the present applicant at this stage, and therefore, the application for grant of anticipatory bail deserves to be rejected.

6. Hence, the application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*