



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

CRIMINAL APPLICATION (BA) NO.269/2025

Bhudhara Nag s/o Pandava Nag

..VS..

**State of Maharashtra, through PSO, PS GRP Railway, Nagpur,
Crime No.0635/2024**

.....
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 and Shri Naman Bhangde, Advocate for the Applicant.

Shri C.A.Lokhande, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 28/04/2025

PRONOUNCED ON : 05/05/2025

1. By this application, the applicant seeks regular bail in connection with Crime No.0635/2024 registered with the non-applicant/police station for offences punishable under Sections 20(b)(ii) and 29 of the NDPS Act, 1985.

2. The applicant, who is original accused No.9, came to be arrested on 3.8.2024 and since then he is in jail.

3. On 2.6.2024, at about 1:40 pm, the Government

Railway Police (GRP) were on patrolling duty on platform No.1 of Nagpur Railway Station and they apprehended two persons on suspicious condition. During interrogation with them, the said two persons found to be carrying two bags containing “Ganja”. The said two persons were accompanied with other few persons. On the basis of CCTV Footage, third person was found near Waiting Room at platform No.1 along with one bag. The said person was also apprehended. It revealed during the interrogation with them that they have brought the said contraband article from Titilagarh (State of Odisha) and are transporting the same to Bhopal and Indore for sell. Three persons succeeded in fleeing away from the spot. The total “Ganja” found along with the other co-accused was of 108.65 kilograms worth of Rs.16,29,750/-. Accordingly, after following the procedure under Sections 42 and 50 of the NDPS Act, the co-accused were arrested. During interrogation with them, involvement of the other co-accused also revealed. On the basis of statement of co-

accused Sushil Agrawal, name of the applicant revealed and it also revealed that the co-accused have procured the said contraband from the applicant on making payment of Rs.1,38,000/-. On the basis of this investigation, the applicant is arrested.

4. Heard learned counsel Shri A.K.Bhangde for the applicant and learned Additional Public Prosecutor Shri C.A.Lokhande for the State.

5. Learned counsel for the applicant submitted that the applicant is not found in possession of any contraband. Merely on the basis of statement of the co-accused and CDRs, the applicant is arraigned as an accused. The statements of the co-accused is not admissible in the evidence. He further submitted that the statement of the applicant recorded is hit by Section 25 of the Evidence Act as the officers, who are vested powers under Section 53 of the NDPS Act, are police officers within meaning of Section 25 of the Evidence Act and, therefore, confessional

statement made to them would be barred under provisions of section 25 of the Evidence Act. Thus, he submitted that neither the statements of the co-accused nor statement of the applicant is helpful to connect the applicant with the alleged offence. Mere CDRs are also not sufficient to connect the applicant with the alleged offence.

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

1. Rajkumar Hariram Gameti vs. State of Gujarat and anr, reported in 2024 SCC OnLine SC 572;

2. Ravi Manoj Rai vs. Union of India and anr, reported in 2025 SCC OnLine Bom 260;

3. Ajay Kumar Gupta vs. Union of India, reported in (2024)9 SCC 455;

4. Criminal Petition NO.3/2024 (Saikat Bhattacharyya vs. Union of India) decided by the Karnataka High Court;

5. Surinder Kumar Khanna vs. Intelligence Officer, Directorate of Revenue Intelligence, reported in (2018)8 SCC 271;

6. Mohammed Fasrin vs. State, represented by the Intelligence Officer, reported in (2019)3 SCC (Cri) 684;

7. Jayendra Saraswathi Swamigal vs. State of T.N., reported in 2005 SCC (Cri) 481;

8. State (By NCB) Bengaluru vs. Pallulabid Ahmad Arimutta and anr, reported in (2022)12 SCC 633, and

9. Criminal Application (BA) No.1247/2024 (Mohd.Abdul Imtiyaz Mohd.Abdul Hanif vs. State of Maharashtra) decided by this court on 19.3.2025.

7. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the application and submitted that not only the statements of the co-accused but also the statement of the applicant recorded under Section 67 of the NDPS Act and the consistent calls between the applicant and co-accused Sushil Agrawal on 1.6.2024 sufficiently show the link between the applicant and the other co-accused. Thus, material collected during the investigation sufficiently shows involvement of the applicant. In view of that, the application deserves to be rejected.

8. After hearing both the sides and perusing the

investigating papers, admittedly, the applicant was not found in possession of any contraband article when the co-accused were intercepted by the GRP. During investigation with them, name of co-accused Sushil Agrawal was revealed and, therefore, he was arrested. During interrogation with said Sushil Agrawal, it revealed to the investigating officer that the contraband article is procured from the applicant and, therefore, applicant is arrested. After his arrest, his statement under section 67 of the NDPS Act is recorded by the GRP from which it revealed that he is involved in supplying contraband article through said Sushil Agrawal. He used to obtain cash amount from said Sushil Agrawal. The screenshots collected during investigation show the transactions between Sushil Agrawal and the other co-accused. The extracts of the register of hotel disclose that other co-accused stayed in the hotel at Odisha. As far as the applicant is concerned, the CDRs show that there were calls between the applicant and Sushil Agrawal on 1.6.2024 (8 in numbers). Except the CDRs and

the statement of the applicant under 67 of the NDPS Act, there is no other material to connect the applicant with the alleged offence.

9. As observed by the Hon'ble Apex Court in catena of decisions relied upon by learned counsel for the applicant, in **Rajkumar Hariram Gameti *supra*; Ravi Manoj Rai *supra*; Ajay Kumar Gupta *supra*, and State (By NCB) Bengaluru vs. Pallulabid Ahmad Arimutta and anr**, wherein it is consistently held that the statement in the form of confession recorded under section 67 of the NDPS Act, in view of the observations of the Hon'ble Apex Court in the case of **Tofan Singh vs. The State of Tamil Nadu, reported in (2021)4 SCC 1** that the officers who are invested with powers under Section 53 of the NDPS Act are police officers within meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them, would be barred under the provision of Section 25 of the Evidence Act and cannot be taken into account in order to

convict an accused under the NDPS Act.

It is further held in the case of **State (By NCB) Bengaluru vs. Pallulabid Ahmad Arimutta and anr** *supra* that merely on the basis of CDRs, involvement of accused cannot be established.

10. In this view of the matter, except CDRs, there is no other material to connect the applicant with the other co-accused. As far as confession part is concerned, the same is inadmissible. Admittedly, commercial quantity was seized from the co-accused, but considering the nature of the evidence, there are reasonable grounds to believe that involvement of the applicant is doubtful and, therefore, the application deserves to be allowed, as per order below:

ORDER

(1) The Criminal Application is **allowed**.

(2) The applicant shall be released on bail on his execution a P.R.Bond in the sum of Rs.1.00 lac with one solvent

surety of the like amount.

(3) The applicant shall furnish local surety for the satisfaction of the court.

(4) The applicant shall attend the Police Station of the Government Railway Police at Nagpur twice a month i.e. 1st and 15th of every month and the Police Station Officer shall record his presence.

(5) The applicant shall also attend local police station at Thana Lathor, Sub District Khaprakhol, district Balangir (State of Odisha) on 5th and 20th of every month and the concerned police station shall record his presence.

(6) The applicant shall not leave the India without prior permission of learned Judge of the court below.

(7) The applicant shall furnish his residential address along with address proof and names of his two relatives and their residential addresses with address's proofs.

(8) The applicant shall also furnish his and his two relatives

cell phone numbers for the satisfaction of the court.

(9) The applicant shall not induce or threat or promise to any of witnesses connected with the crime in question and shall not tamper the prosecution evidence.

(10) The contravention of terms of conditions above would lead to cancellation of the bail.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!