



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

CRIMINAL APPLICATION (BA) NO. 550 OF 2025

(Ajinkya S/o Ashok Nagdawane

Vs.

State of Maharashtra, Thr. PSO, Police Station Ranapratap Nagar,
Nagpur)

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Ms. Surabhi Godbole, Advocate h/f Mr. Prakash Naidu, Advocate for the Applicant.

Mr. Neeraj Jawade, APP for the Non-applicant/State.

CORAM: URMILA JOSHI-PHALKE, J.

DATED : 29th JULY, 2025

1. The Applicant came to be arrested on 19.12.2024 in connection with Crime No.283/2024 registered with Police Station Ranapratap, District Nagpur for the offences punishable under Sections 8(k), 20(b)(2)(k) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act").

2. The crime is registered on the basis of a secret information received by the Informant that one person Karan Pothiwal is proceeding to obtain the delivery of contraband article Ganja at 5 p.m. at express Courier Service situated between Subhash Nagar square to Mangalmurti square. After receipt of such information the entire formalities were completed under the NDPS Act and the raiding party proceeded towards the spot where said Karan Pothiwal was intercepted while taking the delivery of the parcel of Ganja.

During inquiry with him he discloses the name of the present Applicant and also disclosed that he only obtained the courier. In fact this contraband is called by the present Applicant which was 22 Kg 710 grams. On the basis of the investigation the Applicant was arraigned as an accused. The samples were obtained, the entire Ganja was seized by drawing the seizure panchnama and after completion of the investigation, the charge-sheet is filed against the present Applicant.

3. Now, the present Application is filed by the Applicant on the ground that except the statement of the co-accused there is no materiel to connect him with the alleged offence. Moreover, the contraband articles are not segregated and weight altogether, and therefore, the commercial quantity is there, therefore the bar under Section 37 will not attract. She further submitted that considering now the investigation is completed and charge-sheet is filed and as the bar under Section 37 will not attract, the Application deserves to be allowed and he be released on bail.

4. Learned APP, strongly opposed the said Application on the ground that considering the fact that besides the statement of the co-accused there are CDR reports which shows that there is constant communication between the present Applicant and the co-accused as well as the constant communication between the present Applicant and the dealer from Orisa, who has handed over or send the delivery of the contraband articles to the present Applicant. He placed on record various CDR reports and submitted that, there is communication between Karan Pothiwal and the

present Applicant and there were 421 phone calls either incoming or outgoing between the co-accused Karan Pothiwal and the present Applicant. Last communication of the present Applicant and Karan Pothiwal is dated 12.07.2024 at 22.20.19 hours. The Applicant had also called the other co-accused who has sent the parcel to the other co-accused and that calls are 170 in number. Thus, the *prima facie* material he is pointed out to show that the involvement of the present Applicant reveals and the quantity is of a commercial quantity.

5. In support of his contention he placed reliance on ***Hira Singh and Another Vs. Union of India and Anr., reported in (2020) 20 SCC 272***, wherein the Constitution Bench has observed by referring the decision of this Court in ***E. Micheal Raj Vs. Narcotics Control Bureau, reported in (2008) 5 SCC 161***, taking the view that in the mixture of narcotic drugs or psychotropic substance that one or more neutral substance/s, the quantity of the neutral substance/s is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the narcotic drug which is relevant for the purposes of determining whether it would constitute “small quantity or commercial quantity”, is not a good law. He submitted that in view of the observation of the Constitution Bench as seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the

offending drug, while determining the “small or commercial quantity” of the Narcotic Drugs or Psychotropic Substances. In view of that bar under Section 37 will attract and prays for rejection of the Application.

6. On hearing both the sides and on perusal of the entire investigation papers, the involvement of the present Applicant reveals in the above said crime. The statement of the co-accused supported by the CDR reports shows that there are constant calls between the present Applicant and the other co-accused. Besides the CDR reports the statements of the witnesses also discloses the involvement of the present Applicant in the alleged offence. The quantity which was seized from the co-accused is a commercial quantity. In view of the observation of the Constitution Bench in *Hira Singh* (supra), the segregation is not required for considering the commercial quantity. In view of that, the Application deserves to be rejected. Accordingly, I proceed to pass the following order.

ORDER

i. The Application is **rejected**.

7. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)