

MHCC020168552022



Presented on : 15-12-2022
Registered on : 15-12-2022
Decided on : 30-12-2022
Duration : 0-Y, 0-M, 15-D

IN THE COURT OF THE SPECIAL JUDGE FOR N.D.P.S. CASES
AT GREATER MUMBAI

ANTICIPATORY BAIL APPLICATION NO. 2751 OF 2022
IN
SG/INV-50/22-23 SIIB(APSC)

Chhatbar Kunjan Pradipbhai

Age : 29 yrs.,

R/o : G1, Annapurna Apartment,
A Wing, Chharwada Road,
Anandnagar, Vapi, Gujrat-396 191.

...Applicant

V/s.

1. Union of India

(Through the Inspector(Examiner)),
Special Intelligence & Investigation
Wing, Airport Special Cargo
Commissionerate, Mumbai Zonal-III,
Mumbai)

2.The State of Maharashtra

(Complainant No.SG/INV-50/22-23 SIIB(APSC))

...Respondents

Appearance :-

Mr. Yash Chaturvedi, Adv. for applicant/accused.

Ms. Vibhavari Pathak, SPP for Custom.

CORAM : HIS HONOUR THE SPECIAL JUDGE
V. V. PATIL (C.R. NO. 44).

DATE : 30th December 2022.

ORDER

This is an application filed by the applicant **Chhatbar Kunjan Pradipbhai** for grant of anticipatory bail under section 438 of Code of Criminal Procedure, 1860.

2. It is contention with the applicant that he is apprehending imminent arrest on the basis of the notice/summons dated 08.12.2020 received by applicant on his whatsapp in complainant No.SG/INV-50/22-23/SIIB (APSC) registered with Airport Special Cargo Commissioner, issued to him by the respondent no.1 under section 67 of the NDPS Act,1985 in respect of seizure of 250 grams of green plant product purported to be Marijuana/Ganja at International Courier Terminal Mumbai, which is under investigation with respondent No.1.

3. It is submitted that there is every likelihood of the applicant getting arrested by the respondent in pursuant of his appearance in person before the respondent as the inquiry in question concerns with offence punishable under section 20(ii)(A) of the NDPS Act, which is punishable with only one year of imprisonment or fine or both but nonetheless its cognizable offence and non-bailable offence. It is submitted that applicant is permanently residing at Vapi, Gujrat with his old age mother. As such there is no likelihood of his absconding and fleeing from the justice. He undertakes that he will appear before the respondent and join the investigation in respect of the complainant in question and hence, prayed that in the event of arrest of the applicant in connection with the said complaint he be directed to enlarge on bail on such terms and conditions as Court deem, fit and proper.

4. Application is resisted by filing affidavit in reply by the respondent. It is submitted that one parcel with AWB No.770467524497 was intercepted and same was examined by panchanama dated 15.11.2022 by the officer of Courier Cell, APSC Mumbai, which resulted into recovery of total weighing 250 grams of green plant product purported to be Ganja/Marijuana and same was seized under the provisions of NDPS Act. As consignee name, address and Mobile number give on the parcel were same permission of controlled delivery of the parcel was obtained. Accordingly, accused No.1 Munafbhai Mannanbhai Sayyad who picked the parcel was apprehended. Voluntary confessional statement of Munafbhai Mannanbhai Sayyad was recorded, in which he inter-alia stated that he was aware of the subject parcel and was aware of content of the parcel and that he used to deliver the parcel to Kunjan i.e. present applicant the resident of Vapi. Said accused was arrested on 08.12.2022 and offence came to be registered under section 8(c) read with 20(b)(ii)(A), 23(a), 27A, 28, 29 and 35 of the NDPS act 1985.

5. It is submitted that the applicant/accused appears to be the associate protagonist of the illegal import of Ganja/Marijuana. The material on the record shows that the applicant alongwith arrested accused Munafbhai Mannanbhai Sayyad is the brain and master mind and main accused in the illegal import of Ganja. The investigation of the case is in initial stage and the applicant is one important link and if he is granted bail he may abscond and may not be available for trial. Hence, prayed for rejection of the application.

6. Perused application and say. Heard Ld. Advocate for the applicant and as well as Ld. SPP for the Respondent.

7. From the rival contentions, it is reflected that one Courier parcel contained Ganja was intercepted by officers of Courier Cell, APSC, Mumbai and same resulted into recovery of 250 grams Ganja which was seized under panchanama. The name of consignee was Sohel Sakil Shah. His name and address and mobile number was giving on the parcel. Permission of controlled delivery of the parcel was obtained and accordingly accused Munafbhai Mannanbhai Sayyad came to be apprehended who came to pick up the parcel. His statement was recorded under section 67 of the NDPS Act, wherein he stated that he had to deliver the parcel of Ganja to the present applicant. Respondent opposed the application on the ground that from the statement given by the arrested accused, name of present applicant has been disclosed in illegal import of Ganja. He is main accused and master mind of the case. Summons was issued to the applicant on his mobile numbers but applicant did not attend the office of respondent for the purpose of investigation and refused to co-operate the officers of respondent.

8. Per Contra, it is argued on the behalf of applicant that he has nothing to do with alleged offence. He has not committed any offence as alleged by the respondent. He has been falsely implicated in the case only on the basis of statement of co-accused recorded under section 67 of the NDPS Act and it has no evidential value. The applicant is ready to abide by any conditions imposed by the Court at the time grant of anticipatory bail.

9. Now, it is evident that name of the applicant has been revealed in the statement of arrested accused. The respondent is claiming that applicant is main offender and he is engaging in the illegal import of Ganja. However, the respondent is solely relying upon the statement of accused no.1 recorded under section 67 of the NDPS Act, which has no

evidential value and same cannot be considered. Apart from the statement of accused no.1 there is no evidence at all or material placed on record by the prosecution to show nexus of the applicant with seized contraband. It is pertinent to note that offence is pertaining to small quantity of contraband as specified in the schedule given under the act and punishment prescribed for the offence is imprisonment upto one year or fine or both. The applicant is having permanent place of residence and there is no likely hood of his absconding. He is ready to abide by any conditions imposed by the Court and he is ready to cooperate to the investigation machinery. Hence, no purpose will serve by taking applicant in custody. So far as apprehension of respondent regarding absconding of accused and tempering of evidence is concerned same can be taken care by imposing stringent conditions. Hence, I hold that applicant is entitled to grant of anticipatory bail. In the result, I proceed pass the following order.

ORDER

1. Anticipatory Bail Application No. 2751/2022 is hereby allowed in following terms :

(i) In the event of arrest of applicant – **Chhatbar Kunjan Pradipbhai** by Special Intelligence & Investigation Wing, Airport Special Cargo Commissionerate, Mumbai Zonal-III, Mumbai in connection with investigation in Complainant No.SG/INV-50/22-23 SIIB(APSC) for the offence punishable u/secs. 8(c) r/w 20 (b) (ii)(A), 23(a), 27A, 28, 29 and 35 of the NDPS Act 1985, he shall be released on bail on his executing PB and SB of Rs.30,000/- (Rs. Thirty Thousand only) with one or two sureties in the like amount.

(ii) Applicant/accused to report to the Investigating Officer for investigation purpose as and when called by I.O. till filing of charge-sheet.

(iii) Applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as dissuade them from disclosing such facts to the Court or to any police officer.

(iv) Applicant/accused shall not in any manner tamper with the prosecution witnesses.

(v) Applicant/accused is directed to supply his local address to the concerned police station where he intends to reside during investigation of the case.

2. Anticipatory Bail Application stands disposed of accordingly.



(V. V. PATIL)
Special Judge (N.D.P.S.),
City Civil & Sessions Court,
Gr. Mumbai.

Date : 30.12.2022

Dictated on : 30.12.2022
Transcribed on : 30.12.2022
Signed on : 02.01.2023

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGEMENT/ORDER”		
UPLOAD DATE	TIME	NAME OF STENOGRAPHER
02.01.2023	4.15 p.m.	Mr. Ashok S. Patil
Name of the Judge		HHJ Shri V. V. Patil (CR No.44)
Date of Pronouncement of Judgment/Order.		30.12.2022
Judgment/order signed by P.O. on		02.01.2023
Judgment/order uploaded on		02.01.2023