



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

CRIMINAL APPLICATION (BA) NO.940 OF 2024

Surbhi d/o Raju Soni

..VS..

**State of Maharashtra, through PSO Railway Police Station, Gondia,
District Gondia**

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

Court's or Judge's Order

Shri M.V.Rai, Counsel for the Applicant.

Shri S.V.Narale, Additional Public Prosecutor for the NA/State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 19/11/2024

PRONOUNCED ON : 27/11/2024

1. The applicant, who is since date of arrest i.e. 30.4.2024 is in jail, seeks regular bail in Crime No.92/2024 registered with the non-applicant/police station for offences under Sections 20(b)(ii), 29, and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act).

2. The crime was registered as the Gondia Railway Security Force conducted a raid in Train No.08327 (Sambalpur-Pune Express) and during the raid, in Coach No.B-3, beneath Seat Nos.17, 18, 19, 20, and 21, contraband "Ganja" was recovered from five persons including the applicant.

3. Insofar as the applicant is concerned, contraband “Ganja” 7.061 kilograms, from a bag i.e. black colour pittu bag, was recovered in presence of panchas. It transpired that she and her husband along with other co-accused persons were carrying commercial quantity of “Ganja” of 33.201 kilograms worth of Rs.6,64,020/-.

4. As a follow up action, a search was conducted. Samples were obtained in presence of panchas. Seized contraband was forwarded to the Magistrate for inventory. Samples were forwarded to chemical analysis and the applicant was arrested. At the time of the arrest, she was two months pregnant. Now, she is carrying an advanced pregnancy and, therefore, the present application is filed.

5. The application is strongly opposed by the State on ground that during the course of investigation, commercial quantity of “Ganja” was found in possession of the applicant and other co-accused persons including her husband. Search and seizure were done. Inventory Report was also prepared and samples were forwarded to the Chemical Analyzer. The Investigating Officer recorded relevant statements of witnesses and submitted chargesheet against the applicant along with co-accused

persons. Huge quantity of contraband was seized and the applicant was found transporting the same. In view of rigour under section 37 of the NDPS Act, the application deserves to be rejected.

6. Heard learned counsel Shri M.V.Rai for the applicant and learned Additional Public Prosecutor S.V.Narale for the State.

7. Learned counsel for the applicant submitted that in possession of the applicant only 7.061 kilograms of “Ganja” was seized, which is not commercial quantity. He submitted that the application is filed mainly on grounds that she is having an advanced stage of pregnancy and, therefore, for a limited period, she be released on bail. The applicant is exhibiting symptoms, which are indicative of probable complications at the time of delivery of child and, therefore, on humanitarian ground, the applicant deserves to be released on temporary bail. He further submitted that the applicant is in prison, which is not equipped to provide an emergent medical care which the applicant requires.

8. *Per contra*, learned Additional Public Prosecutor for the State submitted that a due care can be taken in the prison also and considering the commercial quantity of contraband article was

found in possession of the applicant and in view of rigour under Section 37 of the NDPS Act, the application deserves to be rejected.

9. Having heard learned counsel for parties and perused material on record, it shows that there is no dispute that the applicant and her husband were found in possession of contraband article "Ganja" along with other co-accused persons. A commercial quantity of contraband was found in their possession. During investigation, the Investigating Officer collected samples in presence of panchas. The contraband articles were also forwarded to inventory. As far as compliance under Section 50 of the NDPS Act is concerned, the same was carried out. The Inventory Report shows quantity seized was commercial.

10. A settled position of law is that a person to be searched under the NDPS Act is required to be informed about his/her right under Section 50 of the NDPS Act before he/she is searched and the same is mandatory requirement. Section 50 of the NDPS Act would be applicable in case of personal search of the accused and not when it is in respect of baggages; articles, and vehicles and or container.

11. As far as the present case is concerned, admittedly, contraband articles were not found during the personal search of the accused, but it was found in baggages carried by the applicant and other accused persons.

12. Insofar as the compliance is concerned, communication on record shows that samples were obtained in presence of panchas.

13. The application is filed mainly on ground of an advanced pregnancy of the applicant. As the applicant was carrying pregnancy on the date of arrest and, now, is carrying an advanced pregnancy, there is an apprehension of complications during delivery of child.

14. It is true that the applicant can be treated at the Government Hospital for the said purpose. However, delivering child during pregnancy in jail atmosphere would certainly impact not only on the applicant but also on child, which cannot be lost sight of. Every person is entitled to dignity which situation demands including prisoner. Delivering child in prison may have consequence on mother as well as child and, therefore, humane considerations are required. The said aspect is considered in the

case of **R.D.Upadhya vs. State of A.P. and ors, reported in (2007)15 SCC 337** wherein the Hon'ble Apex Court considered plight of children staying in jail with their mothers and issued directions as far as child birth in prison is concerned, as follows:

(a) As far as possible and provided she has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases constituting high security risk or cases of equivalent grave descriptions can be denied this facility;

(b) Births in prison, when they occur, shall be registered in the local birth registration office. But the fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned, and

(c) As far as circumstances permit, all facilities for the naming rites of children born in prison shall be

extended.

15. Thus, the Hon'ble Apex Court, in clear terms, guided that as far as possible arrangements for temporary release/parole should made to enable prisoner outside prison.

16. In the light of above said facts, if the case of the applicant is considered, there is no dispute as to fact that the applicant and other co-accused persons were found in possession of commercial quantity of contraband.

17. Admittedly, investigation is completed and chargesheet is filed.

18. As far as merits are concerned, there is a *prima facie* material. Yet, in the light of guidelines issued by the Hon'ble Apex Court, few factors are to be taken into consideration that release of the applicant does not pose a high security risk and would not cause any prejudice to the investigation though there is a rigour under section 37 of the NDPS Act. However, considering circumstances, the application to release the applicant on temporary bail deserves to be considered on humanitarian ground.

19. For foregoing reasons, the application deserves to be allowed by imposing certain conditions. Hence, following order is

passed:

ORDER

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

(2) Applicant - Surbhi d/o Raju Soni, shall be released on temporary bail, in Crime No.92/2024 registered with the non-applicant/police station for offences under Sections 20(b)(ii), 29, and 8(c) of the of the Narcotic Drugs and Psychotropic Substances Act, 1985, for a period of six months from the date of her release from the prison concerned on her executing a P.R.Bond in the sum of Rs.50,000/- with one or more sureties of the like amount to the satisfaction of learned Judge below.

(3) Considering the fact that the applicant is carrying an advanced pregnancy, she is permitted to furnish cash security of Rs.50,000/- in lieu of surety for a period of two weeks.

(4) The applicant shall not directly or indirectly make any inducement or threat or promise to any of witnesses acquainted with facts of the case so as to dissuade her from disclosing such facts to the court or any police officer and shall not tamper with the prosecution evidence.

(5) The applicant shall not indulge herself in similar type of activities.

(6) The applicant shall furnish her cell phone number(s) before the Investigating Officer as well as her address with her address proof.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!