



In The Court of Judge Special Court NDPS Act, Nagpur.

Presided over by  
Shri. P. M. Nagalkar.

**Special Case No.620 of 2022.**

Exh.49

CNR No: MHNG010120502022

Crime No.385 of 2022,

P. S. Railway Police station, Nagpur.

Akash @ Akku Prem Pal.

V/s

State of Maharashtra.

(Through P.S.Railway police station, Nagpur)

Order below Exh.49

(Date: 27<sup>th</sup> March 2024)

1. This is an application for issuance of directions as applicant/accused Akash @ Akku Prem Pal, be released on bail, U/Section 439 of the Code of Criminal Procedure. Applicant/accused booked in Crime No.385 of 2022, for the offences punishable U/Sections 20(b)(ii)(c) and 29 of the NDPS Act.
2. Perused the application along with documents annexed here with and say/report of Investigating Officer/APP. Heard both the sides at length.
3. It is submitted that the present applicant have been booked in the present crime merely on the say of other co-accused. There is nothing have been seized from him and arrested on 09/06/2022 merely on suspicion. It is submitted that statement of co-accused is not

admissible and therefore, applicant be released on bail. Except the statement there is no other prima faice cogent evidence brought on record by the prosecution.

4. On the other hand Learned APP had given say and submitted that huge quantity of alleged contraband have been seized. It is case of commercial quantity, therefore, Section 37 of the NDPS Act is applicable.
5. Further, it is submitted that as arrest has not been made merely on the say of statement of other co-accused, but it was on the basis of other material available on record as CCTV footage. As such the present application be deserves to be rejected.
6. In the light of this facts emerged, submissions by the parties and material on the record, the following points arise for determination before this Court. The said points and the findings thereon which follow the reasons as:

**Point For Determination.**

Sr. No.	Point	Finding
1.	Whether the applicant/accused Akash @ Akku Prem Pal, made out the case as to issuance of direction as to be released on bail, in the given set of facts?	...No.
2.	What order?	...Application Rejected as per final order.

**REASONS**

***As to the point no.1:***

7. At the outset there is no dispute to the extent of adjudication of this application that this applicant accused shown as accused No.7 and

charge-sheet have already been filed. It is also appears that the applicant arrested on 07/07/2022 and from 21/07/2022 is in custody. From the record it appears that as per information received at Court No.5 on New Delhi-Andrapradesh Express some people were found in suspicious manner and inquiry made with them. The alleged contraband was found with the various persons which is commercial quantity.

8. Further, the record shows that on interrogation and inquiry other accused persons had made statement and stated that they have procured and arrange the said contraband for them. Their statement have already been on record as the present applicant had arranged ticket for them and they started for Vishakhapatnam and then at Vijay Nagar Station and they alighted there and where one Hotel was arranged and present applicant had again provided the contraband and then they started Journey in the said trail at Nagpur Station where intercepted and alleged seizure of contraband was made.
9. In this regard it is contended that Bombay Court had consistently followed the Judgment of Hon'ble Apex Court in case of of ***Tofan Singh (2021) 4 SCC 1***, as statement of co-accused is not admissible under Section 67 of the NDPS Act and cannot be used as confessional statement for the other accused.
10. Reliance placed on the order passed in Cri. Bail Appln. No. 1019 of 2023 of Hon'ble Bombay High Court wherein bail was granted. So also in another order in Cri. Bail Appln. No.613 of 2023 wherein the alleged recovery of contraband 85.570 Kg. which seized from railway coach. It is observed that these applicants were traveling separately in another coach and nothing was seized from the applicant. In this backdrop bail was granted. So also in another Judgment of Hon'ble

Apex Court in case of *State By (NCB) Bengaluru...vs...Pallulabid Ahmad Arimutta & Anr.*, wherein Hon'ble Apex Court had reiterated wherein the Tofan Singh Judgment was considered.

11. Since, it is argued that now preposition laid down by the Hon'ble Apex Court in case of *Tofan Singh* statement of co-accused is not admissible as against the accused, but Hon'ble Apex Court and Bombay High Court had distinguished the said preposition as apart from the said confessional statement other evidence must looked into.
12. As if there is any other independent cogent evidence then some is to be considered while adjudicating bail application or at the end of the trial. Now in this regard as pointed out that confessional statement made as discussed above CCTV footage panchnama dated 21/06/2022 wherein which was taken in respect of involvement of the applicant and other accused persons. Wherein it appears that at Vishakhapatnam at Yamini Lodge where they stayed and then by Andrapradesh Express left towards Delhi. There were seven clips found and analyzed which was taken on pen-drive wherein accused persons were appeared.
13. In addition to this CDR were collected and which also submitted that some is independent evidence which is supported by electronic evidence as well as evidence of the independent witnesses as Receptionist at Hotel.
14. In this backdrop considering commercial quantity of contraband therefore, Section 37 of the NDPS Act is applicable. It is not just case of procurement or sale of contraband. On the contrary prima facie there is evidence of financing and harboring for the alleged crime.

Therefore, the applicant accused has to show that there is no reasonable grounds of involvement in the present crime.

15. On behalf of the applicant it is submitted that the preposition laid down by Hon'ble Apex Court in Tofan Singh apart from this no other grounds have been shown that there is no reasonable ground as his involvement in the present crime. Since, it is not case as the applicant's name was revealed during investigation from the statement of co-accused but it is supported with the electronic evidence of the statement of independent witnesses.
16. Moreover, the applicants are from other State. The Trial have been already been commenced. Therefore, this Court of opinion that this is not fit case to exercise the discretion of bail. Hence, the finding of point no.1 is recorded as "**Negative**". Consequently, proceed to pass following order.

**ORDER**

Application is rejected.

Dictated and pronounced in open Court.

Date : 27<sup>th</sup> March 2024

(Pramod M. Nagalkar)  
Judge Special Court NDPS Act,  
Nagpur