

HIGH COURT OF MADHYA PRADESH, JABALPUR**BENCH AT INDORE****S.B.: Hon'ble Shri Justice Subodh Abhyankar****Miscellaneous Criminal Case No.43856/2021**

(Bherulal s/o Radheshyam Dhakad

Versus

Central Government through
Police Station C.B.N. Mandsaur
District Mandsaur MP)(Case was heard on 15th September, 2021)

Counsel for the Parties : Shri R.K. Shastri, learned counsel for the applicant.
Shri Manoj Soni, learned counsel for the respondent / Central Bureau of Narcotics.

Whether approved for reporting : Yes

Law laid down : Applicability of bar as provided under Section 37 of the Narcotic Drugs & Psychotropic Substances Act, 1985 in case of application under Section 438 of the Code of Criminal Procedure, 1973.

Admittedly, the provisions of the Act have harsher provisions for sentencing and even harsher when it comes to bail, as has been provided under Section 37 of the Act. In the case of **Murleedharan v. State of Kerala**, while dealing with a similar provision, Section 41-A of the Kerala Abkari Act, the Supreme Court has held, that :-

“According to the Sessions Judge “no material could be collected by the investigating agency to connect the petitioner with the crime except the confessional statement of the co-accused”.

The above provision is in pari materia with Section 37 of the Narcotic Drugs and Psychotropic Substances Act. This Court has held, time and again, that no person who is involved in an offence under that Act shall be released on bail in contravention of the conditions laid down in the said Section. (vide Union of India v. Ram Samujh [1999 (9) SCC 429]. If the position is thus in regard to an accused even after arrest, it is incomprehensible how the position would be less when he approaches the court for pre-arrest bail knowing that he would also be implicated as an accused. Custodial interrogation of such accused is indispensably necessary for the investigating agency to unearth all the links involved in the criminal conspiracies committed by the persons which ultimately led to the capital tragedy.

Such a wayward thinking emanating from a Sessions Judge deserves judicial condemnation. No court can afford to presume that the investigating agency would fail to trace out more materials to prove the accusation against an accused. We are at a loss to understand what would have prompted the Sessions Judge to conclude, at this early stage, that the investigating agency would not be able to collect any material to connect the appellant with the crime.”

So far as the case of **Toofan Singh (supra)** is concerned, on which the counsel for the applicant has also relied upon, in the considered opinion of this Court, the facts of the aforesaid case cannot be applied in a pre-arrest bail application and thus, the said decision is distinguishable.

Judgment relied upon: **Murleedharan v. State of Kerala** reported as **2001 SCC (Criminal) 795** by distinguishing the latest judgment of the Supreme Court in case of **Toofan Singh v State of Tamil Nadu** reported as **2020 SCC Online SC 882**, which was relied upon by the counsel for the applicant.

Significant paragraph : From 07 to 09
numbers

O R D E R

Post for

23.09.2021

(Subodh Abhyankar)
Judge

High Court of Madhya Pradesh, Jabalpur
Bench at Indore

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Shri R.K. Shastri, learned counsel for the applicant.
Shri Manoj Soni, learned counsel for the respondent / Central Bureau of
Narcotics.

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ORDER

(Passed on this 23rd day of September, 2021)

This **first** application under Section 438 of Criminal Procedure Code, 1973 for grant of anticipatory bail has been filed by the applicant, who is apprehending his / her arrest in connection with Crime No.02/2020 registered at Police Station CNB Mandsaur, District Mandsaur (MP) for offence punishable under Section 8 read with Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (herein after referred to as the Act).

2. The allegations against the applicant are that he was also involved in the aforesaid offence wherein, 1189.700 KG of poppy straw has been recovered from the possession of the co-accused Prem Nath Yogi s/o Shankar Nath Yogi, who, in his statement recorded under Section 27 of the Evidence Act, has stated that it was the applicant who introduced him to another co-accused Harish Dhakad s/o Bagdiram Dhakad who is involved in the smuggling of contraband.

3. Counsel for the applicant has submitted that the applicant has been falsely implicated on the basis of a memo prepared under Section 27 of the Evidence Act and there is no other material available on record to connect him with the offence. Counsel has further submitted that there are no criminal antecedents against the applicant and thus he is entitled to be released on anticipatory bail and the bar under Section 37 of the Act would not be applicable in the present facts and circumstances of the case.

4. Shri Manoj Soni, learned counsel appearing for the respondent / CNB, on the other hand, has vehemently opposed the prayer and it is submitted that it is not the stage where it can be said with certainty that the applicant has not committed any offence, especially when it is alleged that he (present applicant) is the person who has introduced the co-accused Harish Dhakad to co-accused Prem Nath from whose possession the contraband has been seized, as it is alleged that it was Harish Dhakad who supplied the aforesaid contraband to Prem Nath.

5. Counsel has submitted that a huge quantity of contraband has been seized from the main accused and in such circumstances, it would not be safe to grant anticipatory bail to the present applicant as it cannot be said that after his arrest, the respondent / CNB would not be able to collect any other evidence which might be available against him. In support of his contention,

Shri Soni has also relied upon a decision rendered by the Supreme Court in the case of **Murleedharan v. State of Kerala** reported as **2001 SCC (Criminal) 795**.

6. Heard counsel for the parties and perused the record.

7. Admittedly, the provisions of the Act have harsher provisions for sentencing and even harsher provisions when it comes to bail, as has been provided under Section 37 of the Act. In the case of Murleedharan (supra), while dealing with a similar provision, Section 41-A of the Kerala Abkari Act, the Supreme Court has held, that :-

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tragedy.

Such a wayward thinking emanating from a Sessions Judge deserves judicial condemnation. No court can afford to presume that the investigating agency would fail to trace out more materials to prove the accusation against an accused. We are at a loss to understand what would have prompted the Sessions Judge to conclude, at this early stage, that the investigating agency would not be able to collect any material to connect the appellant with the crime.”

(emphasis supplied)

8. Faced with the aforesaid order, counsel for the applicant has also drawn the attention of this Court to the bail orders passed by this Court only in similar circumstances under the Act under Section 438 of the CRPC as also the decision rendered by the Supreme Court in the case of ***Toofan Singh v State of Tamil Nadu*** reported as **2020 SCC Online SC 882**. However, this Court finds that in both the aforesaid decisions in MCRC No.28803/2021 dated 23.06.2021 as also MCRC No.36357/2021 dated 03.08.2021, the attention of this Court was not brought to the decision rendered by the Supreme Court in the case of ***Murlidharan*** (supra). In such circumstances, this Court is not inclined to accept the contentions raised by the counsel for the applicant and finds that the custodial interrogation of the applicant would be necessary to get to the bottom of the case.

9. So far as the case of ***Toofan Singh (supra)*** is concerned, on which the counsel for the applicant has also relied upon, in the considered opinion of this Court, the facts of the

aforesaid case cannot be applied in a pre-arrest bail application and thus, the said decision is distinguishable.

10. In view of the same, no case for grant of bail is made out.

11. Accordingly, MCRC No.43856/2021 stands **dismissed**.

(Subodh Abhyankar)
Judge