

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

CRIMINAL APPLICATION (BA) NO.1194/2017

Imran s/o Afsar Sayyad

..vs..

State of Maharashtra, thr. PSO PS Ballarshah, District Chandrapur

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

Court's or Judge's Order

Shri A.K. Bhangde, Counsel for the applicant.

Shri N.B. Jawade, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.

DATED : DECEMBER 20, 2017.

1. Heard learned counsel Shri A.K. Bhangde for the applicant and learned Additional Public Prosecutor Shri N.B. Jawade for the State.

2. The applicant is arrested on 26.8.2017 in connection with Crime No.334 of 2017 registered with Police Station Ballarshah, District Chandrapur for the offences punishable under Sections 20(C) and 29 of the The Narcotic Drugs and Psychotropic Substances Act, 1985.

3. The investigation is over. The charge-sheet is already filed before the Court of law.

4. The reply filed on behalf of the State states that Shri Swapnil Nirale, Police Sub Inspector, Police Station Ballarshah, District Chandrapur lodged a report wherein it is

stated that Senior Police Inspector Shri Deepak Khobragade of the Anti Narcotic Substances Squad, Branch at Nagpur gave an information that one accused by name Firoz Kha Afsar Kha, who was arrested in respect of Crime No.6022 of 2017 registered for the offences punishable under Sections 20 and 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985, while in custody disclosed that he has kept Narcotic Substances in the house of Kadir Kha, which falls under the jurisdiction of Ballarshah Police Station. The reply further states that after completing formalities, the police party reached to the house of said Kadir Kha. That time, one lady by name Khatijabano Daud Kha was present. According to the reply, the house belongs to the present applicant i.e. Imran. The reply further states that after following the other process, the house was searched and during the house search, 5 gunni bags containing Ganja weighing about 87.538 Kilograms were seized.

5. According to learned Additional Public Prosecutor Shri N.B. Jawade for the State, investigation was made in respect of ownership of the said house and the Authorities have informed that the said house, which is situated at Visapur Area whereat the raid was made and contraband article was seized, belongs to the present applicant. He, therefore, submits that looking to the fact that commercial quantity of the contraband was seized from the house owned by the present applicant, the

applicant is deemed to have possession over the said contraband and, therefore, the application be rejected.

6. It is not in dispute that at the time when the raid was made, the applicant was not present in the house.

7. The say filed by the investigating officer in the Court of Special Judge at Chandrapur, while opposing the bail application of the applicant, is placed on record. Learned counsel Shri A.K. Bhangde for the applicant invited my attention to the same to point out that even according to the prosecution, the present applicant, who is shown as accused No.4, resides at Maulana Azad Ward, Ballarshah, District Chandrapur. Thus, it is his submission that the applicant is not a resident of Visapur though the said house stands in his name in the Grampanchayat Record. He, therefore, submits couple with the fact that the applicant was not present at the time when the raid was made. It cannot be said that the applicant was in conscious possession over the contraband. I find much force and substance in this submission of learned counsel Shri A.K. Bhangde for the applicant at least *prima facie* while deciding the application for bail, especially when the charge-sheet is filed on record.

8. Further, the intimation from the Anti Narcotic Substances Squad, Branch at Nagpur was in respect of Kadir Kha and not against the present applicant. Further, the past

record of the applicant is absolutely clean, is the submission on behalf of learned counsel Shri A.K. Bhangde for the applicant which is not controverted by learned Additional Public Prosecutor Shri N.B. Jawade for the State.

9. In view of the facts that the charge-sheet is already filed, the applicant was not found present at the time when the raid was made, the information given by the Anti Narcotic Substances Squad, Branch at Nagpur was only in respect of Kadir Kha, and though the house belongs to the present applicant as per the Grampanchayat Record even according to the prosecution the applicant resides at Maulana Azad Ward, Ballarshah, District Chandrapur which is at different place, in my view, the applicant is entitled to be released on bail. Consequently, I pass the following order:

ORDER

(i) The criminal application is allowed.

(ii) Applicant Imran s/o Afsar Sayyad, be released on bail on his executing a P.R. Bond in the sum of Rs.1.00 lac (rupees one lac only) with two solvent sureties of the like amount, in connection with Crime No.334 of 2017 registered with Police Station Ballarshah, District Chandrapur for the offences punishable under Sections 20(c) and 29 of the The

**Narcotic Drugs and Psychotropic Substances Act,
1985.**

(iii) The applicant shall attend the police station once in a week i.e. on every Sunday and he shall be in the police station from 2:00 p.m. to 6:00 p.m., till culmination of the Trial.

(iv) The applicant shall not commit any similar type of offence.

(v) The applicant shall not act in such a manner which could be prejudicial to the interest of the prosecution.

(vi) With this, the criminal application is allowed and disposed of.

JUDGE

!! BRW !!

...../-