

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

Criminal Application (APL) No.923 of 2017
(Sheikh Hasan s/o. Sheikh Hussain .vs. State)

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

Court's or Judge's Orders

CORAM : P. N. DESHMUKH &
 MRS. SWAPNA JOSHI, JJ.
DATE : 24.9.2018.

Heard Mr.P.R.Agrawal, learned Counsel for the applicant and Mr.S.J.Kadu, learned Additional Public Prosecutor for respondent/State.

Prayer in this application is to quash and set aside the F.I.R. vide Crime No.421 of 2017 registered with Police Station Nagpur Gate, Amravati for the offences punishable under Sections 20 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter referred to as "the NDPS Act"). Learned Counsel for the applicant submitted that though case of prosecution is based on information received by police, there is no strict compliance of mandatory provisions of Section 42 of the NDPS Act and it is further contended that even otherwise applicant's involvement is based only on statement of co-accused Raziyabi Sheikh Hussain. It is further contended that, on effecting arrest of said co-accused on 14.12.2017 for alleged to have found in possession of 690 grams of ganja, concealed in her house, she was produced for seeking police custody remand on the same day, which was not granted and was remanded to Judicial custody. It is further contended that, in the remand report, there is no whisper of

involvement of applicant in present crime in any manner; in-spite of that applicant came to be arrested in this crime on 15.12.2017. Applicant has, therefore, approached this Court praying for quashing of F.I.R. against him.

Learned Additional Public Prosecutor has submitted that investigation is almost complete and has produced case diary. Learned Additional Public Prosecutor could not dispute fact of arrest of applicant on 15.12.2017, merely on the basis of statement of co-accused Raziyabi. However, he contended that applicant is habitual in commission of offence attracting provisions of the NDPS Act and therefore, prayed that the application be dismissed.

Perusal of case diary would reveal that secret information regarding contraband ganja was received by police naming co-accused Raziyabi Sheikh Hussain and on the basis of such information on 14.12.2017, raid came to be carried out at her house situated at Haiderpura area within the jurisdiction of respondent and in her presence, 690 grams of ganja came to be recovered and sealed. On the basis of report by Assistant Police Inspector, Nagpuri Gate Police Station, offence came to be registered.

Admittedly, there is no name of applicant mentioned in the information or in the report as it is case of respondent that applicant's involvement is established from the statement of co-accused, however, said statement is not admissible in law as is hit by Section 25 of the Indian Evidence Act. Similarly, even for the sake of argument, on considering the submissions advanced by learned Additional Public Prosecutor that applicants' involvement is based on statement of co-accused, there is no such reference in the

remand application filed before the learned Magistrate as same is silent to this effect, though in the remand, it is contended that co-accused Raziyabi is not co-operating with the investigation and has not revealed name of any other person involved in the present incident. In that view of the matter, we do not find any substance in the case of prosecution independently establishing applicants' involvement in the present crime for the reason that available evidence against the applicant is not admissible.

Similarly though the case of prosecution is based on secret information received by police and as such, mandatory provisions of Section 42(1) and (2) of the NDPS Act attracted, on going through the case diary, we did not find compliance of said mandatory Sections 42(1) of (2) of the NDPS Act.

In that view of the matter and on considering the evidence as aforesaid against applicant, we find substance in the submission that if the report so far as applicant is concerned is not quashed, it will amount to abuse of process of law. In the circumstances and even considering the case of prosecution that applicant is a history sheeter having involved in similar offences earlier, from its reply, it is stated that applicant is acquitted in all these cases.

In the circumstances, we do not find any substance to proceed against accused in the crime registered against him. The application is, therefore, allowed in terms of prayer clause (i) of the same.

JUDGE

JUDGE

**jaiswal*

Digitally signed
by Suraj
Satyanarayan
Jaiswal
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