

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY APPELLATE
SIDE CRIMINAL JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 2643 OF 2019

Shankar Mulchand Chhabriya ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr.Pravartak Pathak, Advocate for the Applicant.

Mr.H.J. Dedhia, APP for Respondent – State.

.....

CORAM : PRAKASH D. NAIK, J.

DATE : FEBRUARY 10, 2020

P.C.:

1 This is an application for bail in C.R. No. 193 of 2019, registered with Upnagar Police Station, Nashik, for offences under Sections 20/2(G), 22(G), 22 (G) of Narcotic Drugs and Psychotropic Substances Act, 1985(“NDPS Act”, for short). Applicant was arrested on 31st of March 2019.

2 The prosecution case is that on 30th of March 2019, Upnagar Police Station, Nashik City received information that one person who is involved in business of selling charas is likely to come at Datta Mandir Chowk, which is within the jurisdiction of Upnagar Police Station. Accordingly, trap was laid. After obtaining due permission from the superior officers, a team consisting of informant and other police staff had been to the spot whether suspect was going to come alongwith narcotics

RajeP.
Aher

Digitally
signed by
RajeP. Aher
Date:
2020.06.08
16:52:51
+0530

and psychiatric substance i.e. charas. Two pancha's were called and panchnama was prepared to that effect. At about 02.30 p.m. the team laid a trap and waited near LIC office road. At about 02.45 hours one person had come on the spot on his moped. He was asked to stop by the police. The police disclosed their identity. The person gave his name. He was explained about the intention to take his personal search. He was also explained whether he intended to give his search before the gazetted officer. The accused signed document stating that he was not willing to have his personal search before the gazetted officer. Thereafter, the search was conducted in the presence of panch witnesses. The vehicle in possession of the said person was also searched on opening the dickey of the vehicle, one pink colour plastic bag was found in the dickey. It was containing two parts of charas weighing 350 grams and 1015 grams each. The muddemal property was worth Rs.3,78,500/-. According samples were drawn. They were sealed in the presence of panch witnesses and thereafter, the accused were arrested. Report was lodged with the police station. Offence was registered vide Cr. No.193/2019.

3 The applicant was produced before the concerned court for remand. He was remanded to custody from time to time. The investigation was completed. Charge-sheet is filed. The applicant preferred an application for bail before the NDPS Special Court. The said application was rejected by order dated 16th August 2019.

4 Learned advocate for the applicant submitted that the applicant has been falsely implicated in this case. The investigation is complete and the charge-sheet is filed. There are discrepancies in the investigation conducted by the police which creates doubt about the

entire case. The applicant is not having any criminal antecedents. The mandatory provisions of the NDPS Act were not followed. The applicant cannot read and write. There is non-compliance of section 50 of the Act. Vague document has been prepared showing that the applicant was made aware that he could allow his personal search and it can be conducted before the gazetted officer. There is no independent witness with regards to the drawing of panchnama and alleged recovery of narcotic substance from the accused. The entire panchnama had lasted till about 02.45 a.m. on 31st March, 2019. The record shows that the applicant had reached at Upnagar at 12.29 a.m., which claiming shows that the document was prepared by the police at the police station. There is discrepancy with regards to the time of offence as apparent from the first information report. The station diary entry shows that the raiding party left at 10.00 p.m. It is submitted that the station diary entry could have been prior to 10.00 p.m. considering the facts reflected in the first information report and the panchnama. The grounds for custody sought in the remand application before the concerned Court were to find out the source of charas and whether any other person is involved in the crime. However, during investigation nothing could be revealed and hence, further custody of the applicant is not necessary.

5 Learned A.P.P. submitted that on information being received that the accused is likely to come at a spot with charas, the trap was laid and the applicant was found in possession of charges. The mandatory provisions of the NDPS Act were complied. The applicant was appraised of his right under section 50 of the NDPS Act. The offence is of serious nature. The discrepancies as averred by the learned counsel for the applicant will have to be appreciated at the time of trial. On the basis of such

alleged discrepancies, bail cannot be granted to the applicant. There are restrictions in granting bail in view of section 37 of the NDPS Act.

6 On receipt of information, the police after complying the procedural safeguards had proceeded to conduct a raid. The applicant was intercepted. He came on a moped. He was informed about his right under section 50 of the NDPS Act. Writing was also executed from him. He was found in possession of charas weighing 350 grams and 15 grams. The Muddemal Property was worth Rs. 3,78,500/- . The applicant has contended that there are discrepancies about the time of discrepancies in the panchnama and the first information report. It is also contended that the applicant is illiterate person and, therefore, he could not understood the appraisal which was recorded in writing. He was able to sign it and, therefore, he could only signed the statement recorded by the investigating agency. It was also contended there are no antecedents again the applicant. On perusal of the documents, such as first information report, information received by the police, the panchnama, it is clear that *prima facie* the procedural safe guards are complied. The discrepancies as agitated by the learned counsel for the applicant will be a matter of the evidence and will have to be considered at the stage of trial. In view of embargo to grant bail incorporated under the provisions of the NDPS Act, no case for grant of bail is made out and hence, the application deserves to be rejected.

:: ORDER ::

- (i) Bail Application No.2643 of 2019, is rejected and stands disposed of accordingly.

(PRAKASH D. NAIK, J.)