

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

CRIMINAL APPLICATION (BA) NO.293 OF 2020

(Tofik Khan Bhuru Khan Vs. The State of Maharashtra thr. PSO PS Karanja (Gramin),
Washim)

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

Court's or Judge's orders.

Mr. Mir Nagman Ali, Advocate for Applicant.
Mr. C.A. Lokhande, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.
DATE: 26th OCTOBER, 2020.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2] The applicant is seeking regular bail in Crime 341/2019 registered with Karanja (Gramin) Police Station, Washim for offences punishable under section 17, 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), having failed to secure bail from the Sessions Court.

3] The prosecution case is that at 10:00 a.m. on 09.10.2019 secret information was received between 02:00 p.m. to 04:00 p.m., that Tofik and Bilal aged 25 and 21 respectively would sell opium and poppy straw to the truck driver who ply trucks on the Karanja Sheloo Bazar

road and that the drugs are stored in a Dhabha. The information was conveyed to the superior officers and armed with their approval a police squad accompanied by *panchas* apprehended Tofik and Bilal. After due compliance with the provisions of section 50 of the NDPS Act, Tofik and Bilal were searched. Opium and poppy straw powder, in thin plastic bags, was seized from Tofik – the applicant herein. Eight small boxes wrapped in plastic were seized from co-accused Bilal. The seized boxes contained black powder. Certain currency and mobile sets were also seized. The applicant and Bilal disclosed that the contraband was stored in Dhabha owned by co-accused Pratapsingh Hundal. The said Dhabha was raided and huge quantity of narcotic drugs, the market value of which is Rs.1,83,86,000/- was found stored in eighteen bags, cumulatively weighing more than 367 Kg.

4] Mr. Mir Nagman Ali has canvassed only one submission. The submission is that the allegations against the applicant stand falsified by the omission in the letter/requisition to the Chemical Analyzer to refer to the contraband seized. Extension of the said submission is that the contraband seized is not referred even in the inventory. According to Mr. Mir Nagman Ali the twin test of section 37 of the NDPS Act is satisfied in the essence that there are reasonable grounds to believe that the applicant is not guilty of the offence and that the applicant is not likely to commit a similar offence.

5] The submission is noted only for rejection. Perusal of the spot and seizure *panchnama* reveals that the contraband seized from the person of the applicant and Bilal was added to the huge quantity seized from the Dhabha and the entire quantity was weighed cumulatively.

6] It must further be borne in mind, that the applicant is charged under section 29 of the NDPS Act which makes abetment and criminal conspiracy punishable with the punishment provided for the offence. The investigation has revealed that the applicant is a member of the syndicate involved in drug peddling. In this view of the matter, the alleged inconsistencies in weight of the contraband seized etc. emphasized by Mr. Mir Nagman Ali do not take the case of the applicant any further.

7] In my considered view, there is more than ample material on record to connect the applicant with the crime. In any event, it is difficult and indeed impossible to record a *prima facie* finding that in every probability the applicant may be acquitted of the offence. The first test envisaged under section 37 of the NDPS Act is not satisfied.

8] The application is without substance, and is dismissed.

JUDGE