

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.12 OF 2021

Aawez Khan s/o Javed Khan

... Applicant

Versus

The State of Maharashtra

... Respondent

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Mr. N. R. Shaikh, Advocate for applicant.

Mr. S. B. Narwade, APP for respondent – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 21st January, 2021

Pronounced on : 4th February, 2021

ORDER :-

1. Applicant has been arrested in connection with Crime No.300 of 2020 registered with Pundlik Nagar Police Station, District Aurangabad for the offences punishable under Sections 22(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS Act'). He has filed present application under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. N. R. Shaikh for applicant and learned APP Mr. S. B. Narwade for respondent – State.

3. It has been vehemently submitted on behalf of the applicant that the prosecution story is that on the secret information that a person

is selling some tablets without license in Mukundwadi Railway Station area, the police conducted raid. It is stated that the present applicant was found having 15 boxes of tablets NRx Nitrozepam Tablets IP worth Rs.75,000/-, which is stated to be narcotic drug. It is stated that the applicant is innocent and has been wrongly made a scapegoat. The quantity involved is lesser than the commercial quantity, but greater than small quantity. The applicant is merely 20 years old young student of engineering studying in P.E.S. College of Aurangabad. His parents have died long back and he has the responsibility to look after the old grandmother and younger brother. It was further submitted that the mandatory provisions of Section 100 of the Code of Criminal Procedure as well as under the NDPS Act have not been followed. The investigation is complete and charge sheet is filed. Co-accused have been released on bail and, therefore, on the ground of parity also, he deserves to be released on bail.

4. Per contra, learned APP strongly opposed the application and submitted that though the charge-sheet has been filed, it would show that there is ample evidence against the applicant. Applicant was actually found selling those tablets, which are the narcotic products. All the mandatory provisions have been properly followed. Even the opportunity was given to the present applicant to have search of the

person of the raiding party, but he refused to take. He was found at a public place and, therefore, there was no question of compliance under Section 100 of the Code of Criminal Procedure. Though the co-accused have been released on bail, their role are stated to be different and, therefore, he cannot claim parity.

5. Since the charge-sheet has been filed, the custody of the applicant is not required for the purpose of investigation, but in the said circumstance, it is required to be seen as to what evidence has been collected in the charge-sheet against the present applicant. Applicant is stated to be found possessing 15 boxes of NRx NITRAZEPAM TABLETS – IP and NITROSUN-10 having Batch No. AB43375, Mfg-Date 04/2020, Expiry date – 03/2023 mrp-rs-50 par10 tablet, inclusive of all taxes Quantity 15x5x2x10 worth Rs.75,000/-. In all, there were 1500 tablets. Along with the charge-sheet itself, table as per sub-clause vii(a) and xxiii (a) of Section 2 of the NDPS Act has been given and the said schedule has come into effect from 16-07-1996. At serial No.221, this tablet has been shown for which 20 is the small quantity in grams and the commercial quantity in grams is 500. Here, the weight appears to be not written, but description has been given which was appearing on the box. Even if for the sake of arguments, it is accepted that it is not of commercial quantity, yet, the applicant himself is coming with the case

that it is more than small quantity. Now, it is the contention in the FIR and statements of witnesses, especially the raiding party and the panchas, that the present applicant was found carrying those tablets in boxes in a bag. The raiding party disclosed its intention to have search of the applicant and offered him to have their personal search, but he refused. He has given it in writing. Thereafter, his search was taken when from his bag, 15 boxes were found. Sample has been taken. Panchanama was carried out and, thereafter, he was taken to police station, where the FIR was lodged. Statements of witnesses have been recorded. The raiding party had asked him about whether he has license to sell those tablets, then he could not produce it. Under such circumstance, there is evidence against the present applicant. When it comes to the offence under the NDPS Act, then the Courts are required to take a serious view, as such drugs and psychotropic substances are affecting the young generation. Age and domestic problems of the applicant cannot be considered as the offence is against the society at large. Hence, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm