

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

Criminal Application (APL) No. 94 of 2019

Maksud Ahmad s/o Aminuddin Malik

Vs.

The State of Maharashtra Through PSO Gittikhadan, Nagpur

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

Court's or Judge's orders

Mr. Sk. Sabahat Ullah, Advocate for the applicant
Mr. Sagar Ashirgade, APP for the respondent

CORAM : MANISH PITALE, J.

DATED : AUGUST 04, 2021

By this Application, the applicant has challenged order dated 05/02/2018, passed by the Court of Adhoc District Judge-1 and Additional Sessions Judge, Nagpur, whereby application for discharge (Exh.12) filed on behalf of the applicant (original accused No.2) was rejected.

2. Mr. Sk. Sabahat Ullah, learned counsel appearing for the applicant submits that in the present case, other than a statement allegedly given by the co-accused No.1 to the effect that brown sugar was supplied by the applicant, there is absolutely no other material produced along with the chargesheet to implicate the applicant. It is submitted that a bare perusal of the documents filed along with the

chargesheet would show that there is absolutely no material to connect the applicant with the alleged incident, which led to registration of FIR on 28/11/2015, against the applicant and the co-accused person for offences under Sections 21 and 29 of the The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). Reliance is placed on judgments of this Court in the cases of **Laxmi Kali Babita Vs. State of Maharashtra 2005 ALL MR (Cri) 571** and **Virbhadram Vyankanna Guggalot Vs. State of Maharashtra 2008 ALL MR (Cri) 203**. It is submitted that in identical circumstances, this Court had allowed applications for discharge.

3. Mr. Sagar Ashirgade, learned A.P.P. on the other hand invited attention of this Court to the FIR and submitted that the applicant was named in the FIR itself and that it could not be said that his name was added as a matter of afterthought. It is submitted that the concerned Police Officer, who caused the FIR to be registered, in the information submitted to the Police Station on 28/11/2015 itself, recorded that the co-accused person had named the applicant herein as the person who had supplied brown sugar. Attention of this Court is also invited to a statement of a witness recorded during the course of investigation, wherein the witness made statements about the applicant allegedly supplying brown sugar on various occasions in the area concerned. The learned A.P.P. also submitted that the applicant has criminal antecedents, with as

many as 8 cases registered against him under the provisions of the NDPS Act, Arms Act, Indian Penal Code, Gambling Act and the Essential Commodities Act. On this basis, it was submitted that the application deserved to be dismissed.

4. Before advertng to the material available on record in the present matter, it would be appropriate to refer to the judgments of the Hon'ble Supreme Court. In the case of **Laxmi Kali Babita Vs. State of Maharashtra** (supra), this Court held as follows :

“[4]

Having considered the rival submissions and after perusal of record there is substance in the grievance made on behalf of the applicant (s) before this Court that there is absolutely no evidence against them except the statement of co-accused which is pressed into service on behalf of the prosecution. Even the learned A.P.P. fairly accepts this position; he was unable to point out any other material on record to implicate the Applicant (s) in the charge of conspiracy or otherwise. The Counsel for the applicant (s) has rightly placed reliance an the exposition of the apex Court in Suresh Budharmal Kalani Alias Pappu Kalani Vs. State of Maharashtra, reported in 1998 S.C.C. (Cri) 1625, in particular paragraphs 6 and 7 of the said decision. The Apex court has observed that at the stage of framing of the charge the Court is required to confine its attention to only those materials collected during investigation which can be legally translated into evidence and not upon further evidence that the prosecution may adduce in the trial which would commence only after the charges are framed and the accused denies the

charges. The Apex Court then relying on the exposition in the case of *Kashimira Singh Vs. State of M.P.*, reported in A.I.R. 1952 S.C. 159 has observed that, confession of co-accused cannot be called in aid to frame charges against accused in the absence of any other evidence to do so. In the present case except the statement of co-accused, there is no other independent evidence. A priori, it will not be open to frame any charge against the applicant (s) herein. In view of this settled legal position, the applications as filed by the applicant (s) before the trial court for discharge ought to have been allowed. Accordingly, the applicant (s) succeed. Impugned orders are set aside and Misc. applications preferred by the revision applicants before the trial Court are allowed. Ordered accordingly.”

5. Similarly, in the case of **Virbhadram Vyankanna Guggalot Vs. State of Maharashtra** (supra), this Court found that other than the statement of the co-accused, there was no other material available on record to implicate the applicant. On this basis, the applicant stood discharged in the said case also.

6. In the present case, during the course of registration of FIR, the informant / complainant - Police Officer stated that the co-accused Sheikh Salim had stated that the brown sugar recovered from him had been supplied by the applicant herein. This is perhaps the reason why the name of the applicant figured in the FIR as an absconded accused. Copy of the chargesheet along with the accompanying documents was placed on record before this Court. Perusal of the same shows that the statements recorded

during the course of investigation do not appear to connect the applicant with the alleged incident. There is only one witness, whose statement the learned APP has also relied upon, to state that the applicant has been indulging in the activity of supplying brown sugar in the area concerned on earlier occasions also. Yet, it is specifically stated in the said statement itself that the said witness believes that the applicant herein may have supplied brown sugar to the co-accused person. Apart from this vague and general statement by the lone witness, there is nothing on record.

7. Therefore, other than the statement of the co-accused person specifically stating that the applicant herein had supplied the brown sugar, which was recovered from him when he was apprehended and FIR was registered on 28/11/2015, there does not appear to be any other material to connect the applicant with the incident in question. In such a situation, it needs to be examined if the matter is allowed to go to trial, what would be the nature of evidence that the prosecution would be able to put-forth before the Court. The material available on record shows that other than the statement of the co-accused person, there is nothing on record to connect the applicant with the alleged incident. The trial would therefore be reduced to an empty formality. In this situation, the alleged criminal antecedents of the applicant cannot be the only basis for rejecting the prayer for discharge. Therefore, it is found that the

Court below in the present case committed an error in rejecting the application for discharge. Accordingly, the present application is allowed. The impugned order is quashed and set aside and the application for discharge (Exh.12) filed on behalf of the applicant stands allowed.

JUDGE

MP Deshpande