

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

Criminal Application (ABA) No. 61 of 2021

(Mir Zeeshan Ali S/o Mir Sajjad Ali ..vs.. State of Maharashtra through P.S.O., Sarmaspura, Achalpur,
Dist. Amravati)

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

Court's or Judge's orders

Mr. R. J. Mirza, Advocate for the applicant
Mr. V. A. Thakre, APP for the State

CORAM : ROHIT B. DEO, J.

DATED : 09-02-2021

Heard.

2. The applicant is seeking pre-arrest protection in Crime 84/2020 registered with Police Station, Sarmaspura, Achalpur, District Amravati for offence punishable under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('Act' for short) and Sections 353 and 332 read with Section 34 of the Indian Penal Code.

3. The case of the prosecution is that a Maruti Van MH-37-A-459 was intercepted at 7.00 p.m. on 21-7-2020. The applicant Mir Zeeshan Ali @ Shooter Mir Sajjad Ali and two others disembarked from the vehicle. Two persons who are arraigned as co-accused fled. Mir Zeeshan Ali @ Shooter was made aware of his rights under Section 50(1) of the Act. While the search of the vehicle was ongoing, Mir Zeeshan Ali @ Shooter attempted to flee. Police Constable Sayyad Ajmat attempted to restrain Mir Zeeshan Ali @ Shooter.

However, Mir Zeeshan Ali @ Shooter picked up the stone and dealt the blow on the head of the police constable and fled. *Ganja* (marijuana) weighing 10 Kg and 250 gms worth Rs. 1,80,000/- was seized from the vehicle.

4. Mr. Rahil Mirza would submit that the prosecution case is inherently incredible. The cousin of Mir Zeeshan Ali @ Shooter lodged report against the concerned police officers including Sevanand Wankhade on 9-3-2020 alleging that Mir Zeeshan Ali @ Shooter was mercilessly assaulted. Mr. Mirza would submit that enraged by the said report, Mir Zeeshan Ali @ Shooter is falsely implicated. I do not find the prosecution case inherently incredible, assuming that there is any substance in the report lodged by the cousin of Mir Zeeshan Ali @ Shooter. No inference can be drawn that Mir Zeeshan Ali @ Shooter is falsely implicated.

5. Section 37 of the Act reads thus :

37. Offences to be cognizable and non-bailable. - (1)
Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), -

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27-A and also for offences involving commercial

quantity] shall be released on bail or on his own bond unless -

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]

6. The expression “bail” is interpreted to include pre-arrest protection, and, therefore, the Court is precluded from granting pre-arrest protection unless on the basis of material on record, a satisfaction is recorded that there are reasonable ground for believing that the accused is not guilty and he is not likely to commit any offence while on bail. Be it noted that the the twin conditions operate independently and both are required to be satisfied, if the accused is to be protected.

7. In the case at hand, the investigation qua the applicant Mir Zeeshan Ali @ Shooter is ongoing. Considering the material on record, there is no reason whatsoever for any Court to record a satisfaction that

reasonable grounds exist for believing that Mir Zeeshan Ali @ Shooter is not guilty.

8. Mir Zeeshan Ali @ Shooter has criminal antecedents. He is facing prosecution vide Crime 97/2010, Crime 86/2011, Crime 3032/2013, Crime 81/2015 which is registered under Section 302 of the Indian Penal Code, Crime 200/2017, Crime 57/2020 and Crime 77/2015 which is registered against the applicant at Police Station, Sarmaspura. The proposal of externment is under consideration. Considering the propensity of Mir Zeeshan Ali @ Shooter to indulge in serious crimes including murder, there is no scope to record a satisfaction that he shall not commit similar offence, if released on bail. Both the conditions are, therefore, not satisfied.

9. The application is dismissed.

JUDGE