

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

CRIMINAL APPLICATION (BA) NO.588 OF 2021

(Shamim Ejaj s/o Mohammad Sharif Vs. The State of Maharashtra thr. PSO PS New
Kamptee, Dist. Nagpur)

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

Court's or Judge's orders.

Mr. C.R. Thakur, Advocate for Applicant.
Mr. M.K. Pathan, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 14th JULY, 2021.

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

2. The applicant, along with one Salauddin Pathan are arraigned as accused in Crime 373/2020 registered with Police Station New Kamptee, Nagpur for offence punishable under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. The learned counsel for the applicant Mr. Thakur invited my attention to the gist of the prosecution case, which is summarized by the Investigating Officer at page 39 of the charge-sheet.

4. The prosecution case appears to be that on 23.07.2020 secret information was received that *ganja*

(cannabis) is stored for the purpose of sale at the residence of co-accused Salauddin Pathan. After completing the usual formalities the raiding squad went to the spot. However, after reaching the spot the raiding squad received information that the contraband is not stored at the house of Salauddin Pathan, but is stored at the house of the applicant Shamim which is just opposite the house of Salauddin Pathan. Raid was conducted at the house of Shamim Ejaz which led to discovery and seizure of 62 Kg. 658 Gram *ganja* stored in gunny bags and kept in a room.

5. Even according to the prosecution, it has transpired during the course of investigation, that the seized *ganja* is owned by Salauddin Pathan. It is further the prosecution version that Salauddin Pathan entered into an agreement to purchase the residential house of the applicant Shamim. In essence, it has emerged during the investigation that while the consideration is paid, the sale-deed is not executed. For that matter, according to the prosecution the registered owner is Ajay Meshram and he sold the residential house to Shamim. Even Shamim does not have a sale-deed and appears to have further dealt with the residential house on the basis of an agreement to sale with Ajay Meshram and the fact that he was in possession.

6. While the prosecution alleges that the applicant facilitated the commission of the crime/abetted the same after receiving certain monetary benefit, I have not come

across any material whatever to *prima facie* suggest that the applicant accused Shamim received any amount or consideration from Salauddin Pathan and in return stored the contraband, consciously.

7. Mr. M.K. Pathan, the learned APP invites my attention to the statement of Shamim. The admissibility of the statement apart, if at all, the statement is exculpatory and not inculpatory. No other material is brought to my notice which would show that Shamim was in conscious possession of the *ganja*. In the teeth of the prosecution version that the ownership of the house virtually stood transferred to Salauddin Pathan, at least *de facto* if not *de jure*, the fact that the applicant Shamim did not object or protest when Salauddin Pathan stored certain gunny bags in a room of the house is not indicative of either abetment or conscious possession. These observations are of course *prima facie* observations which shall not influence the learned Special Judge, during the course of trial.

8. Accepting the prosecution version at face value, I find that there are reasonable grounds to believe that Shamim has not committed the crime. Shamim has no criminal antecedents. At any rate, there is no material to suggest that Shamim is involved in the commission of an offence under the NDPS Act. In this view of the matter, I have reason not to believe that Shamim is not likely to engage in similar offence if released on bail. In my

considered view, the twin test envisaged under Section 37 of the NDPS Act stands satisfied.

9. The applicant be released on bail in connection with Crime 373/2020 registered with Police Station New Kamptee, Nagpur for offences punishable under Sections 20 and 29 of the NDPS Act, on executing PR bond of Rs.16,000/- (Rupees Sixteen Thousand) with one solvent surety of the like amount.

10. The applicant shall not, directly or indirectly, make any attempt to influence the witnesses or otherwise tamper with the evidence.

11. The applicant shall not leave the country without the permission of the trial Court.

JUDGE