

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

Criminal Application (BA) 693/2021

Prashant Chute V State of Maharashtra

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Mr. S.P. Bhandarkar, Advocate for applicant.
 Mrs. K. Deshpande, APP for State.

CORAM : ROHIT B. DEO, J.
DATE : August, 06, 2021.

The applicant is seeking bail in connection with Crime 416 of 2020 registered with Police Station Ganeshpeth, District Nagpur, for offences punishable under Sections 8(c), 22(c) and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985, (for short, 'N.P.D.S. Act')

2. In brief, the prosecution alleges that on 28-11-2020 secret information was received that a consignment of MD Drug is being dispatched by Amir Khan, resident of Bombay, to Nagpur through Aadiraj Travels, and the said consignment will be collected by Fulsingh Pathhi.

3. It is alleged that at 12.45 pm the Police squad reached the office of Sagar Travels along with two panchas. It is alleged that at 13.15 pm a person entered the office of Sagar Travels, whose demeanor was found suspicious. He collected the parcel and approached his two wheeler, when he was nabbed.

4. It is alleged that Fulsingh disclosed that the white

coloured powder in the consignment is MD. The raiding party collected samples of 5 grams and seized two mobile sets and the two Wheeler, from Fulsingh.

5. Fulsingh allegedly disclosed that Amir Khan, who is based in Mumbai regularly sends such parcels, which he used to collect for some monetary consideration.

6. It is then alleged that- while in custody Fulsingh received call from Amir Khan, the conversation was heard by the raiding squad on speaker phone and Amir Khan allegedly asked Fulsingh to separate 140 gms drug and deliver the same to Mohd. Amir Malik and deliver 60 gms from the balance quantity to Yash Puniyani.

7. It is then alleged that Amir Khan called Fulsingh again and told him that Mohd Amir Khan is waiting near the graveyard in white colour car. The raiding squad reached the spot, Mohd Amir became suspicious and he fled away.

8. According to the investigating officer Amir Khan again called Fulsingh to convey that the 60 grms MD which is to be delivered to Yash Puniyani will be collected by Prashant Sute at Uppalwadi near the post office. The raiding squad reached Uppalwadi, Prashant Sute arrived on his white colour Activa, he was identified by Fulsingh and thereafter apprehended by the raiding squad.

9. Prashant Sute - the applicant herein - allegedly told the raiding squad that he has been collecting consignment

from Yash Puniyani who used to pay him some amount.

10. According to the Investigating Officer, Fulsingh again received call from Amir Khan who conveyed that Mohd. Amir Malik will be sending one Asif Ansari to collect the consignment, at Uppalwadi. The raiding party allegedly apprehended Mohd Asif Ansari, when he arrived at the spot and approached Fulsingh.

11. It is then alleged that Amirkhan called the applicant and asked him about delivery. Amir Khan allegedly told the applicant that out of 60 grms MD, 10 grms be separated and delivered to Azhar Patel who is waiting near the Haldiram Store at Medical Square. The raiding squad reached Haldiram Store and arrested Azhar Patel.

12. I have scrutinized the material on record on the anvil of the twin test envisaged by Section 37 of the N.D.P.S Act, and having done so I am of the considered view that a case for grant of bail is made out.

13. Concededly the only materiel against - the applicant is the alleged phone call. It is not in dispute that the applicant was not, at any point in time in possession of contraband. The chargesheet does not disclose any material to prima facie suggest that the applicant either abated or attempted to commit any offence under the N.P.D.S Act or that he made any preparation to commit an offence.

14. While the applicant is shown to have been arrested on

29-11-2020, it is crystal clear that he was in the custody of the Police, the moment he arrived at the scene on two Wheeler, and was apprehended, in the afternoon on 28-11-2020. Notably, even according to the Investigating agency, the applicant was compelled (vernacular words प्रवृत्त केल) to converse with the alleged kingpin Amir Khan. The only material which according to the investigating agency is incriminatory is the telephonic conversation which the applicant allegedly had with Amir Khan while in custody of the Policed squad.

15. I am not inclined to make any positive observation on the admissibility of the incriminating material lest the prosecution or the accused is prejudiced during the course of the trial. However, I am satisfied, that reasonable grounds exist to record a satisfaction that the applicant may not be involved in the offence.

16. The other condition envisaged is that satisfaction must be recorded to believe that the applicant is not likely to indulge in similar offence if released on bail. Since there is no criminal antecedent against the applicant, I do not have any hesitation in recording a satisfaction that the applicant is not likely to indulge in similar offence if released on bail.

17. The application is allowed subject to the following conditions.

18. The applicant be released on bail in connection with Crime 416 of 2020 registered with Police Station Ganeshpeth, District Nagpur, for offences punishable under Sections 8(c), 22(c) and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985, on executing PR bond of Rs. 16,000/- (Rupees Fifteen Thousand) with one solvent surety of the like amount.

19. The applicant shall, within 48 hrs of release from custody, furnish the current address, cell number/s and any other relevant details by placing on record of the jurisdictional Court an appropriate praecipe and shall scrupulously update this information in case of any change.

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

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

JUDGE