

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

CRIMINAL APPLICATION (BA) 1043 OF 2021

(Chandu s/o. Shekhulal @ Shekulal Mohite..vs.. State, thr PSO, PS Ramnagar, Tahsil District Wardha)

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

Court's or Judge's orders.

Mr. R.S. Nayak, counsel for applicant.
Mr. N.S. Rao, APP for non-applicant /State.

CORAM: ROHIT B. DEO, J.

DATE: 13.10.2021.

Heard.

2. The applicant is seeking bail in connection with Crime 241/2021, registered with Police Station, Ramnagar, Wardha, Tahsil and District Wardha, for offences punishable under sections 8, 20, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act").

3. The learned counsel for the applicant Mr. R.S. Nayak would submit that 19 years old applicant is roped in only on the basis of the statement of Mrs. Pooja Mohite, who is the applicant's sister and the main accused, and that since a statement recorded under section 67 of the NDPS Act, is not admissible in view of the decision of the

Hon'ble Supreme Court in *Tofan Singh vs The State of Tamil Nadu*, [(2020)12 SCALE 519], a case for bail is made out, notwithstanding that the quantity involved is commercial quantity.

4. Admittedly, the quantity of cannabis (Ganja) seized is commercial, and therefore, the applicant will have to satisfy the twin test envisaged by section 37 of the NDPS Act. I have scrutinized the material in the chargesheet, and having done so, the learned counsel Mr. R.S. Nayak appears to be right in the submission that the applicant is roped in only on the basis of the inadmissible statement.

5. There is no material in the chargesheet, other than the inadmissible statement, to link the applicant with the crime. A faint attempt was made to argue that the applicant was in contact with the main accused. This submission canvassed by the learned APP Mr. N.S. Rao belies the admitted position that the applicant is the brother of the main accused and assuming that he was in contact with her, no inference can be drawn that he was involved in the

crime. That apart, the cellphone number which is tracked, is not in the name of the applicant. The subscriber is Mrs. Rajkanya Mohite. Her statement is not recorded. There is, therefore, no material to link the applicant with the Call Detail Record.

6. Considering the material on record, I am satisfied that reasonable grounds exists to believe that the applicant may not be involved in the offence. The applicant has no criminal antecedents, and therefore, further satisfaction can be recorded that if released on bail, the applicant is not likely to indulge in any similar offence.

7. The Application is allowed subject to the following conditions:

(i) The applicant be released on bail in connection with Crime 241/2021, registered with Police Station, Ramnagar, Wardha, Tahsil District Wardha, for offences punishable under sections 8, 20, 29 of the Narcotic Drugs and Psychotropic Substances Act, on executing PR bond of Rs. 16,000/- (Rupees Sixteen Thousand) with one solvent surety of the like amount;

(ii) The applicant shall not, directly or indirectly, make any attempt to influence the witnesses or otherwise tamper with the evidence;

(iii) The applicant shall not leave the country without the permission of the trial Court.

Judge

Belkhede