

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

CRIMINAL APPLICATION (BA) 1112 OF 2021

(Mohammad Touhid Mohammad Anis..vs..State, thr PSO, PS Sitabuldi, Nagpur)

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

Court's or Judge's orders.

Ms. A.D. Kolhe, counsel for applicant.
Mr. M.K. Pathan, APP for non-applicant /State.

CORAM: ROHIT B. DEO, J.

DATE: 30.11.2021.

Heard.

2. The applicant is seeking bail in connection with Crime 30/2021, registered at Police Station, Sitabuldi, Nagpur, for offences punishable under sections 22(2), 29 and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act").

3. The applicant is arraigned as accused 3 in the crime.

4. Briefly, the case of the prosecution is that pursuant to secret information received, the staff of the Sitabuldi Police Station apprehended accused 1 and accused 2 with commercial quantity of M.D. drug.

Accused 1 and 2 allegedly travelled from Mumbai to Nagpur in bus and de-boarded at Sitabuldi at 3.20 a.m. on 20.1.2021.

5. In so far as the role attributed to the applicant is concerned, according to the prosecution, he was in telephonic contact with the apprehended accused from 3.00 a.m. to 3.25 a.m. While the prosecution contends that there were four calls between the applicant and the apprehended accused in the said period, the learned counsel for the applicant points out that the telephonic conversation was initiated by accused 1. Even according to the prosecution, it was the raiding squad which instructed accused 1 to call the applicant to the spot. The prosecution contends that this was done since the secret information was that it was the applicant who would be collecting the contraband from the apprehended accused.

6. At this stage, there is no record of the contents of the telephonic conversation. I have not come across either transcript or a panchanama of the

conversation which the applicant may have had with the apprehended accused. Notably, it is not even the case of the prosecution that the speaker of the mobile was on and that any member of the raiding party heard the conversation and a panchanama was recorded.

7. While I am conscious of the decision of the Apex Court in *Union of India, through NCB vs. Md. Nawaz Khan (Manu SC 0689/2021)* and it would be wholly unnecessary for the prosecution to show that the applicant was as a fact in *de jure or de facto* possession of the contraband, in the absence of any material to connect the applicant with the crime, and this is only a prima facie observation which would not prejudice the prosecution in the trial, I am impelled to record a finding of existence of sufficient grounds to believe that the applicant may not be involved in the offence punishable under the provisions of the NDPS Act, particularly, since he has no criminal antecedents. For similar reason, I am inclined to record further satisfaction, that if released on bail, the applicant is not likely to commit an offence under the NDPS Act.

8. I have consciously refrained from minutely examining the material on record, and the other submissions canvassed by the learned counsel for the applicant Ms. A.D. Kolhe, which touches the alleged discrepancy in the quantity of the contraband seized etc., since such consideration is not necessary to decide the applicant's entitlement to bail.

9. The application is allowed subject to the following conditions:

(i)The applicant be released on bail in connection with Crime 30/2021, registered at Police Station, Sitabuldi, Nagpur, for offences punishable under sections 22(2), 29 and 8(c) 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)While on bail, the applicant shall not indulge in any criminal activity and shall attend each date of hearing scrupulously. Even a singular default or breach of this condition shall ipso facto entail in cancellation

of bail, if an application is moved by the prosecution or any interested person;

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

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

Judge

Belkhede