

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

930 BAIL APPLICATION NO.1711 OF 2022

WALMIK SHIRISH RAJALE
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Applicant : Mr. Ladda S. G.
APP for Respondent-State : Ms. V. S. Choudhari.

CORAM : S. G. MEHARE, J.
DATE : 11.11.2022

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent-State at length.
2. Learned counsel for the applicant would submit that the applicant had been arraigned as an accused only on the statement of one accused Naushad, who was arrested for another crime. After one month after the registration of the present Crime, said Naushad was arrested for another crime, and at that time, he confessed to the police that he had sold the contraband to the present applicant. On his statement, the applicant was arrested on 11.09.2022. Since then, he has been behind bars.

3. Learned counsel for the applicant would submit that the law is well settled in the case of *State by (NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta and others along with other cases by the Hon'ble Supreme Court; 2022 SCC Online SC 47*, that confessional statement recorded under Section 67 of NDPS Act will remain inadmissible in the trial of the offence under NDPS Act. Arrest made by the petitioner NCB on the basis of the confessional/voluntary statement of the respondent, co-accused under Section 67 of the NDPS Act, cannot form the basis of overturning the impugned order releasing them on bail. In addition to this legal argument, he would argue that the applicant runs a medical shop. He has a bare business of purchasing the paper pouches from said Naushad. He has paid him for the paper pouches and shown the entries in his account. Only on the basis of those entries in the accounts, the applicant has been falsely arraigned as an accused. The applicant has no concern with the alleged illegal business of prohibited drugs. He never purchased any contraband from said Naushad. The applicant is the sole bread earner of his family. His father is paralyzed. Nothing is to be recovered from the applicant. The applicant has been arraigned as an accused for the first time. Therefore, Section 37 of NDPS Act would not attract. He prayed for bail.

4. Learned APP has strongly opposed the application. She would argue that considering the facts in their entirety, the prosecution has the evidence to link the accused with the Crime. Huge contraband was recovered from the said Naushad. He was supplying prohibited drugs to various persons. The applicant used to purchase the said drugs unauthorizedly from him under the pretext of having the business of buying paper pouches from him. Though nothing has been found in the search from his shop. The statement of the accused, Naushad cannot be thrown at this juncture. The payment made by the applicant to said Naushad 29 times is a strong circumstance against the applicant. The offence is apparently serious and dangerous to the life of the persons using without the prescription of the medical practitioners. Therefore, the bail may be declined.

5. So far as the prosecution case is concerned, it has been alleged that the drugs which were allegedly sold unauthorizedly were used for the termination of pregnancy and to improve sex power. Some of the drugs were sedatives. It is not in dispute that after one month of registering the present Crime, the applicant has been arraigned as an accused on the arrest of Naushad. The applicant did not deny that he has the

business of paper pouches with Naushad. He has shown his payment in his accounts. There can be any number of purchase transactions from time to time. Therefore, the number of transactions would not built the confidence that those transaction were relating to the prohibited drugs for which the offence has been registered. The law laid down by the Hon'ble Supreme Court in the case of *State by (NCB) Bengaluru Vs. Pallulabid Ahmad and others (cited supra)*, is that the statement of co-accused under Section 67 of the NDPS Act is inadmissible. Therefore, it may not be the ground to decline the bail. Apart from the statement of Naushad and the business transaction with him, there is nothing on record against the applicant. In the search of his shop also, the police did not find any incriminating evidence against the applicant.

6. Considering the nature of the allegations against the applicant and the stage of the investigation, it appears that the material investigation against the applicant is over. The applicant has been arraigned for the first time for a such serious crime. At the time of the first Crime, it would be difficult to say that he may again involve in a similar Crime. Considering the facts of the case and law laid down by the Hon'ble Supreme Court in the case of *State By (NCB)*

Bengaluru Vs. Pallulabid (cited supra), the application deserves to be allowed. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant **WALMIK SHIRISH RAJALE** be released on bail on furnishing PB. and S.B. of Rs.1,00,000/- (Rupees One Lakh only) with one or two sureties of the like amount, in Crime No.723 of 2022, registered by Police Station Rahuri, District Ahmednagar, for the offences punishable under Sections 18(A), 18(C), 22, 27, 27(B)(ii), 28 of Drugs and Cosmetics Act, Section 328, 420, 276 read with Section 34 of IPC and Section 21, 21(b), 22, 22(a), 22(B) of N.D.P.S. Act, on the conditions to attend the Police Station as and when called on written notice by the Investigating Officer, he shall not involve in the similar nature of offences.

(S. G. MEHARE, J.)

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vmk/-