

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 731 OF 2018
WITH
CRIMINAL APPLICATION NO. 582 OF 2018
WITH
INTERIM APPLICATION (ST.) NO. 2691 OF 2021**

Okoye Cyprain Chinnasa	...Applicant
Versus	
The State Of Maharashtra	...Respondent

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Mr. Tanveer Khan, Advocate for the Petitioner.

Adv. Shishir Hiray, Special Public Prosecutor, a/w Mr. Ankur Pahade
and Mr. Sanjay Kokane, Advocate for the Respondent – State.

CORAM	:	PRAKASH D. NAIK, J.
DATE	:	1st AUGUST, 2022.

PER COURT:

1. The petitioner had preferred application for discharge before the Court of Additional Sessions Judge, Thane vide Exhibit-78 in NDPS Case No.28 of 2016. The said application was rejected by order dated 21st August, 2017. This order is challenged before this Court. Letter dated 15th January, 2018 challenging the impugned order was sent through jail, which was registered as Criminal Writ Petition No.731of 2018. Criminal Application No. 582 of 2018 in Criminal Writ Petition No.731 of 2018 was sent through jail, for expediting hearing of said writ petition. Interim Application No. 2691 of 2021 is an application filed through Advocate appointed to

represent petitioner by providing requisite details about prosecution case and seeking discharge in the said proceedings.

2. The First Information Report was registered on 12th April, 2016 for offences under Section 8(c), 9(A), 25(A), 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'). The Anti Narcotic Cell, Thane received confidential information that two persons would be arriving by vehicles carrying 3 k.g. Narcotic Drug Ephedrine for sale in city of Thane. Trap was arranged. At about 4:30 pm. two vehicles arrived at the spot. Two persons alighted from the car with bags in their hand. They were apprehended at spot. They gave their names as Sagar Powale and Mayur Sukhdare. During the search 1 k.g. white coloured crystal powder was found in possession of accused No.1 Sagar Powale. Search of bag found in possession of Mayur Sukhdare resulted in 1 k.g. white coloured crystal power. Contraband was seized. Interrogation of accused Nos.1 and 2 revealed that, Dhaneshwar Swami, employee of Avon Life Science Pvt. Ltd., MIDC, Solapur, supplied said contraband to accused Nos. 1 and 2. he was arrested on 14th April, 2016. On his personal search 5.500 k.g. Ephedrine was seized. Interrogation of Dhaneshwar Swami revealed the source of seized drugs. He showed the place where unauthorized stock of Ephedrine was kept. Search was carried out which

resulted in seizure of 9500 k.g. Ephedrine. The applicant is a Nigerian national. He was arrested on 9th February, 2017. About 15 persons were arrested. The petitioner was also involved in C.R. No.11 of 2016 registered with Shil-Daighar police station under Section 8(c) and 22 of NDPS Act on 10th April, 2016. The case of prosecution in C.R. No.11 of 2016 is that the petitioner was found in possession 500 gms. white coloured cream, MD (Mephedrone) valued Rs.12,50,000/-. It is alleged that, the Methamphetamine seized from petitioner was made from Ephedrine procured from Avon Life Science Pvt. Ltd., Solapur. The Ephedrine was process by petitioner for selling it in market. The Ephedrine was transported from Avon Life Science Pvt. Ltd., Solapur by various persons. One of the person involved in transporting namely Sushil Kumar is accused in present case. It is alleged that Sushil Kumar procured Ephedrine from Avon Life Science Pvt. Ltd., Solapur and sold it to petitioner to prepare Methamphetamine from it. It is alleged that car used by accused Sushil Kumar for taking out Ephedrine from company premises was seized. The statement of Rakesh Kanavadekar was recorded. He disclosed involvement of petitioner in the alleged offence. The said witness and petitioner has been knowing each other for long time. The said witnesses is accused in three cases, registered with different police stations. Statements of

employees of company were recorded. According to prosecution, the petitioner is involved in this case. He is engaged in business of transporting Ephedrine, and supplied it to others for producing Methamphetamine. Such storage, supply was illegal.

3. Learned Advocate for the applicant submitted that there is no evidence against the petitioner. There is no recovery of contraband from the applicant in the present case. The petitioner was arrested in C.R. No.11 of 2016, (NDPS Spl. Case No.27 of 2017). Merely on account of petitioners involvement in that case he has been falsely implicated in this case. The prosecution is relying on statement of co-accused. Petitioner was granted bail in C.R. No. 11 of 2016. this court granted bail to co-accused Rajendra Dimpri and Babasaheb Dhotre vide order dated 24th March, 2021. Learned Advocate relied on observations made while granting bail to the said accused. Even on the face of record and bare perusal of charge-sheet. There is no prima facie case made out against petitioner. No charge for any offence can be framed against the petitioner. Learned Advocate relied upon the decision of Supreme Court in the case of Union of India V/s Prafulla Kumar Samal 2015 ALL SCR (O.C.C.) 119.

4. Learned Special PP for state submitted that there is sufficient evidence to frame charge against the petitioner. Prima facie case is

made against him. He was involved in another case and found in possession of contraband. The prosecution is relying upon several circumstances which indicate the involvement of the petitioner. At the stage of framing charge the Court is not required to hold roving inquiry. Various statements recorded during the course of investigation supports prosecution case. The offences is of serious nature. The prosecution has filed affidavit in reply opposing the relief. It is submitted that bail application preferred by the petitioner was withdrawn since the Court or not inclined to grant relief. He relied upon the decisions in the case of Sanghi Brothers (Indore) Pvt. Ltd. V/s. Sanjay Choudhary and Others reported in (2008) 10 SCC 681 & decision of Soma Chakravarty V/s. State through CBI (2007) 5 SCC 403. Statement of Jay Mukhi (accused) was recorded under Section 164 of Cr.PC. in which he stated that his associates sent Ephedrine to Ahmedabad from Avon Life Sciences Pvt. Ltd. company to make it as white powder form and packing, which was to be delivered to petitioner. After processing Ephedrine was to be exported to wanted accused vicky Goswami. The applicant processed Ephedrine for converting into Methamphetamine. 15 persons were arrested. Five persons are absconding. Petitioner is involved in C.R. No. 11 of 2016. Narcotic Drug was seized from him. Ephedrine was procured from Avon Life

Science, Solapur. Accused Sushil Kumar arrested in present case had procured Ephedrine from said company, and sold it to petitioner. Statement of Rakesh Khanavadekar discloses involvement of petitioner. Supplementary statement of Nagendra Baliram Agwane shows the entry of Red coloured Renault Car bearing registration No. MH-46-AP-172 with two persons. There is sufficient evidence to proceed against petitioner.

5. The factual matrix of the present case would indicate that the prosecution case that the accused is engaged in the business of transporting the contraband known as Ephedrine and supplied the same to the individuals and for producing the Narcotic Drugs and Psychotropic Substances more particularly known as Methamphetamine. Statements of various witnesses were recorded. The applicant was initially arrested in another case and while in custody in that case his involvement was revealed in the present case. In this case during the course of investigation several persons were arrested. Statement of various persons were recorded. Perused the statements which are part of chargesheet and the documents relied upon the prosecution, prima facie case is made out against the petitioner. There is sufficient evidence to frame charge against the petitioner. The material on record cannot be discarded at this stage. Statement of Rakesh Khanavadekar and

other circumstances on record are sufficient to frame charge and proceed against petitioner. This is not the stage to appreciate evidence. In the case of Union of India V/s. Prafulla Kumar Samal and Anr. (supra) it was observed that the Court, while framing charge has undoubted power to sift and weigh evidence for limited purpose of finding out whether or not a prima facie case against the accused is made out. Where the material placed before the Court disclose grave suspicion against the accused which has not been properly explained the Courts will be fully justified in framing a charge and proceeding with trial. The test to determine a prima facie case would naturally depend upon facts of each case and it is difficult to lay down a rule of universal application. If two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against accused, he will be fully within his right to discharge the accused. In exercising his jurisdiction under Section 227 of the Court cannot act merely as post office or mouthpiece of prosecution. In the case of Sanghi brothers (Supra) it was held that, the test to be applied at the stage of discharge is of prima facie case. There is not necessity of formulating opinion about prospect of conviction. In some Soma Chakravarty Vs. Central Bureau of Investigation (Supra), it was observed that, Court can

frame charge if on the basis of material on record it can form on opinion that commission of offence by accused was possible. There is no debate about the parameters which have to be considered at the stage of framing of chargesheet. Applying those principles, I find at there is sufficient material to proceed against the petitioner. No case is made out for discharge.

ORDER

Criminal Writ Petition No.731 of 2018 is rejected and disposed of.

(PRAKASH D. NAIK, J.)