

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

ANTICIPATORY BAIL APPLICATION NO. 978 OF 2022

Nepal Dulhe Singh	 Applicant
v/s.	
The State of Maharashtra	 Respondent

Mr. Sinthia Bala i/b. Dhananjay Deshpande for the Applicant.
Ms. S.S. Kaushik, APP for the State.
Mr. Vijay Sathe, PSI, Virar Police Station, Palghar.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 12th APRIL, 2022.

P. C. :-

. This is an Application under section 438 of Cr.P.C. for pre-arrest bail in C.R.No.1140/2019 registered with Virar Police Station, Dist. Palghar for offences punishable under sections 8(C), 21, 22 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985.

2. Heard Mr. Sinthia, learned counsel for the Applicant and Ms. S.S. Kaushik, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The records prima facie reveal that pursuant to the First

Information Report (FIR) lodged by Mukesh Ramchandra Tatkare, Police Naik, crime was registered against the co-accused – Mahesh Rathore. It is the case of the prosecution that while the complainant was on patrolling duty, he had seen the co-accused moving around in a suspicious manner. He has stated that search of the co-accused was taken after complying with the statutory requirements. He was found in possession of 5kg of MD powder worth approximately Rs.42,50,000/-.

4. It is the case of the prosecution that the co-accused – Mahesh Rathore had disclosed that the Applicant had supplied the said contraband substance. His statement was recorded on 03/12/2019. Apart from unsuccessful visit to the house of the Applicant on 05/12/2019, the Investigating Agency has not conducted any investigation to ascertain the veracity of the statement of the co-accused or to establish the link of the Applicant in the present crime. Thus, except for the statement of the co-accused, there are no reasonable grounds to believe that the Applicant is guilty of the offence. Hence, the rigours of section 37 are not attracted. Under the circumstances, the Applicant is entitled for pre-arrest bail.

5. It is rather unfortunate that either intentionally or otherwise, the Investigating Officer who now claims that the offence is of serious nature, has conducted investigation in a very casual and callous manner, without taking into consideration social impact of drug menace. It is stated that the co-accused who was found in possession of 5 kg of mephedrone which is a commercial quantity, has been released on bail vide order dated 08/07/2020 solely on the ground that he was in custody for seven months. This order has not been challenged.

6. It is also pertinent to note that while rejecting the Application filed by the Applicant, learned Special Judge has in order dated 16/02/2020 observed that the Investigating Officer had failed to raise any grounds to oppose the Application and to apprise the learned APP about the facts. Learned Judge had therefore directed the Superior Police Officer to take note of the facts. Even after these observations, there is no change in the fact situation. Till date, the Investigating Officer has not collected any incriminating material to link the Applicant with the crime. No explanation is forthcoming for such inaction since last over 04 years. Even today, the Investigating Officer has chosen not to remain present before the Court. Such casual and

callous approach of the Investigating Officer in such serious matters needs to be viewed seriously.

7. Under the circumstances, the Anticipatory Bail Application is allowed on the following terms and conditions :-

(a) In the event of arrest of the Applicant in C.R.No.1140/2019 registered with Virar Police Station, Dist. Palghar, he shall be released on bail on furnishing bail bonds in the sum of Rs.50,000/- with one or two sureties in the like amount, one of whom shall be a local surety.

(b) The Applicant shall report to the Investigating Officer for four days from 18/04/2022 between 11:00 a.m. to 02:00 p.m. ;

(c) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted ;

(d) The Applicant shall keep the Investigating Officer informed of his current address and mobile contact numbers,

and/or change of residence or mobile details, if any, from time to time.

8. Registrar (Judicial) to forward a copy of this order to The Superintendent of Police, Palghar and Mr. Suhas Kamble, API, NCB, Palghar for necessary action.

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9. The Application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)