

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1836 OF 2022

Irshad Ikbal Inamdar .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Rajendra Bidkar for the Applicant.

Ms.A.A.Takalkar, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.

DATED : 20th JULY, 2022

P.C:-

1. The applicant is facing charge in C.R.No.86 of 2021 for the offences punishable under Sections 8(c), 20(B), 20© of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, **“the N.D.P.S. Act”**). On completion of investigation, the charge-sheet has been filed in the Special Court on 07/06/2022, which arraigns the applicant as accused No.3, but he is shown as absconding accuse. The other two accused persons, being accused No.1-Kamal Hasan Raza Ansari @

Guddu and accused No.2-Shehnazbi Sattar Pathan, came to be arrested and are in judicial custody.

2. On 17/12/2021, secret information was received that a person named, Kamal Hasan Raza Ansari has stored ganja in a room in Fatima Nagar. On tipped of, a raid was conducted on the given address and three gunny bags, consisting of various packets of ganja, weighing 74.624 kg. came to be seized by drawing panchanama. C.R.No.866 of 2021 came to be registered with Shantinagar Police Station, pursuant to the said raid. Charge-sheet came to be filed against the arrested accused persons.

3. During the interrogation with accused No.1, the name of accused No.2 surfaced on record and she was arrested on 25/12/2021. Accused No.1 and the present applicant are her son-in-laws.

During interrogation, she gave a statement to the effect that she procured the said contraband from Visakhapatnam and transported it in a rickshaw with the help of the present applicant from Kalyan and it is on the basis of this statement, the present applicant is arraigned as an accused. Apprehending his arrest, he seeks protection by filing the present application.

4. When the charge-sheet placed on record against the co-accused is carefully perused, it alleges that the contraband was found in possession of accused No.1. When the statement of the co-accused dated 29/12/2021 placed on record by the learned A.P.P. is perused, the case of the prosecution is that the co-accused has implicated the applicant, as being involved in transporting the contraband. Pertinent to note that the said statement is not recorded under Section 67, but is a statement recorded under Section 161 by the Crime Branch Unit. Though the learned counsel for the applicant would vehemently raise an objection about the admissibility of the said statement, which is not compiled in the charge-sheet filed against the accused persons, keeping aside the said argument, I have perused the said statement.

Accused No.2 has stated that for last eight years, she was engaged in selling of ganja and she speaks about the circumstances, how she got involved into the said business. Accused No.2 has stated that her husband was into trading of rice, but, subsequently he got himself engaged in trade of ganja and whenever he used to go to distinct places, apprehending that he would find himself in an intoxicated state as he was addicted to liquor, his wife Shehnazbi used to accompany him.

After his death, she continued with the said trade and used to visit Visakhapatnam for taking delivery of ganja. She narrates the manner in which she used to bring the contraband to Mumbai and disburse the money to her daughters.

As per accused No.2, before two months, accused No.1 informed her about a customer, who was interested in ganja and on meeting him, she delivered ganja. She state that on various occasions, she delivered ganja to him on receipt of the consideration. On further demand from accused No.1, she went to Visakhapatnam to procure the same and a person by name Shenu, the seller and one person accompanied her to Visakhapatnam from where she travelled to Kachnara Station and further to Kalyan. On reaching Kalyan, her son-in-law, Irshad (present applicant) accompanied her in Rickshaw to Bhiwandi to deliver the contraband to accused No.1. She delivered ganja to accused No.1 and stayed with her son-in-law till she received the money. Thereafter, she made the payment to Shenu by visiting him in Visakhapatnam. This event was repeated whenever her son-in-law used to make the payment. She was, however, not aware about any further transaction at the instance of accused No.1.

5. The said statement is perused. As far as the present applicant is concerned, a limited role has been assigned to him, being accompanying accused No.2 from Kalyan to Bhiwandi in a rickshaw. The charge-sheet does not attribute any conscious possession/assistance being rendered to the co-accused by the present applicant. He is not found to be in possession of any contraband and the entire contraband has been already seized from accused No.1. The charge-sheet does not contain any material indicating the involvement of the applicant, barring the statement of accused No.2. and his involvement is only to the extent that he has accompanied accused No.2 in a rickshaw, when she deboarded the train at Kalyan and proceeded to Bhiwandi. It is not the case of the prosecution that he has received any money towards the said contraband.

Since the charge-sheet has already been filed against the two accused persons and the material is already compiled therein, the custodial interrogation of the applicant is not warranted. He is, therefore, entitled for protection in anticipation of his arrest, subject to the following conditions.

: ORDER :

- (a) Application is allowed.

(b) In the event of arrest in connection with C.R.No.866 of 2021 registered with Shantinagar Police Station, applicant-Irshad Ikbāl Inamdar shall be released on bail on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

(c) The applicant shall report to the concerned police station on Monday and Tuesday between 11.00 a.m. to 2.00 p.m. for a period of two weeks and, thereafter, as and when called for.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(SMT. BHARATI DANGRE, J.)