

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

CRIMINAL APPLICATION (BA) NO. 27/2022
Irfan Khan Zamir Khan...Versus...State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. V.R.Deshpande, Advocate for the applicant.
Mr. I.J.Damle, APP for respondent/State

CORAM : AVINASH G. GHAROTE, J.

DATE : 23/02/2022

1] Heard Mr. Deshpande, learned counsel for the applicant and Mr. Damle, learned APP for respondent/State.

2] The order dated 21.2.2022 records the entire background in which the applicant came to be arrested. The statements of the persons named therein, all of whom, barring a few, are Police personnel, would indicate that it is a mere repetition of what one person has said. Though the vehicle was searched and the applicant was found to be travelling in the said vehicle, the statement records that the mobile was recovered from the residence of the applicant. The entire charge-sheet does not indicate that the applicant was ever taken from the spot of incident which was a public place to his residence at Hamja Plots, Old City Akola and a search was made there in which a mobile was seized. As against which the seizure phanchnama dated 31.5.2021

indicates that the seizure was made not from the house of the applicant, but from the person of the applicant on the spot, which is Panchmukhi Hanuman Mandir Road, in front of Aditya Car Service Centre, Akola.

3] As recorded in the order dated 21.2.2022, Nissar Khan, the person who was called with Electronic Weighing Machine, states that he was called on 4.2.2021, around 3 months prior to the date of the incident. Except for travelling in the vehicle, the entire prosecution story does not indicate any role of the applicant, who was sitting in the back side of the vehicle, except for the fact that the material was found in a sack. The provisions of Sec 50(1) of the NDPS Act, also do not appeared to have been complied with. There are major inconsistencies and contradictions as are prima facie apparent from the documents on record, considering which in my considered opinion, it appears that there are reasonable grounds that the applicant may not be guilty of the offence. It is therefore at least prima facie appears that the provisions of Section 37 of the NDPS Act may not come in the way of the applicant of being enlarged on bail and any apprehension of the applicant likely to commit any offence can be taken care of by imposing stringent conditions. Hence, the following order.

4] The application is allowed.

The applicant be released on bail in Crime No.610/2021 registered for the offence punishable under Sections 8(c), 20(b)(ii) of the NDPS Act r/w 34 of the IPC, on his furnishing PR bond in the sum of Rs. One lakh with two solvent sureties of the like amount.

The applicant shall not tamper with the prosecution evidence or try to influence the witnesses in any manner whatsoever.

Though the charge-sheet has been filed, considering the nature of offence, the applicant shall attend Police Station Akola City on every Tuesday and Friday between 10.00 a.m. to 2.00 p.m. and shall obtain acknowledgment of his appearance by maintaining a separate diary.

The applicant shall attend each and every date before the learned Sessions Court and any single default in any of the above conditions shall result in cancellation of the bail.

JUDGE

Rvjalit