

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

CRIMINAL APPLICATION (BA) NO.126 OF 2022

Salman Abdul Sheikh
Vs.
The State of Maharashtra (Through Kalmana Police Station)

WITH

CRIMINAL APPLICATION (BA) NO.127 OF 2022

Mohd. Yasin s/o Mohd. Ilyas Ansari and another
Vs.
State of Maharashtra (Through Officers of Kalmana Police Station, Nagpur)

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

Court's or Judge's orders

Mr. Anil Mardikar, Senior Counsel a/b Mr. Qureshi, learned counsel for the
applicant in both applications.

Mr. A. R. Chutke, APP for non-applicant/State in both applications.

CORAM : AVINASH G. GHAROTE, J.
DATE : 01/03/2022

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After hearing the matter for some time,
when the Court was not inclined to accept the application
on merits, at this stage, Mr. Mardikar, learned Senior
Counsel for the applicant, on instructions, seeks to
withdraw the application. The statement is accepted.

The application is dismissed as withdrawn.

CRIMINAL APPLICATION (BA) NO.126 OF 2022

1. The applicant is arraigned for the offences punishable under Sections 188, 272, 273 and 328 of the Indian Penal Code and under Section 30(2)(a), 26(2)(iv), 27(2)(e) and 59 of the Food Safety and Standards Act, 2006.

2. The incident is dated 21.01.2021 at about 1.00 a.m. The applicant has been arrested on 21.01.2021. The investigation is still in progress. Mr. Mardikar, learned Senior Counsel for the applicant submits that the applicant has no criminal antecedents and was merely carried by the co-accused Mohd. Yashin and Jaid Illisa Ansari for the purpose of holding gunny bags, and therefore, was not even aware of the contents of the gunny bags, and nor the nature of the contents were disclosed to him. He submits, that the applicant is serving in a private hospital and considering that he has no connection in the present crime, the applicant may be released on bail.

3. Mr. Chutke, learned APP for non-applicant/State submits that the investigation is still going on. The statement of the seller has been recorded as well as the statement of the co-accused Mohd. Jaid and the other co-accused Salman Abdul Sheikh has also been recorded. The learned APP for non-applicant/State does not dispute that the applicant has no criminal

antecedents and was merely carried by the co-accused for the purpose of holding gunny bags while carrying them on a motorcycle. The statement of the seller in this regard also supports the position, about non involvement of the applicant as of now. He, however, submits since the investigation is going on, the application needs to be rejected.

4. Though, the investigation is going on, the case diary, does not indicate any *prima facie* involvement of the applicant, which is also apparent from what has been stated by the learned APP for non-applicant/State and the statement of the seller Shankar Chandulal Tanwani, as well as of both the co-accused considering which, it *prima facie* appears, that the applicant was merely carried by the other co-accused for the purpose of holding the gunny bags, in view of which, I do not see any reason to continue the further incarceration of the applicant, as his role in the instant matter does appear to be germane. The application therefore is allowed. Hence, the following order.

ORDER

(i) The applicant be released on bail for the offence punishable under Sections 188, 272, 273 and 328 of the Indian Penal Code and under Section 30(2)(a), 26(2)(iv), 27(2)(e) and 59 of the Food Safety and Standards Act, 2006, on furnishing P.R. bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) and two solvent sureties in the like amount.

(4)

27.ba.126.2022 & 127.2022

(iii) The applicant shall not tamper with the prosecution witnesses nor shall indulge into any act of unduly influencing them in any manner whatsoever.

(iv) The applicant shall not indulge into any offence of a similar nature.

(v) The applicant shall also report on every Monday and Thursday to the concerned Police Station between 10.00 a.m. to 2.00 p.m. and obtained his attendance in a separate diary maintained for that purpose.

(vi) Violation of any of the above condition, shall result in cancellation of bail.

JUDGE

Sarkate