

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

CRIMINAL APPLICATION (BA) NO. 323 OF 2022

Diwakar s/o Baban Kottulwar **Versus** State of Maharashtra, through P.S.O., Beltarodi, Nagpur.

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

Court's or Judge's Order

Shri Sunil Manohar, Senior Advocate a/b Shri U.P. Dable, Advocate
for applicant.

Ms Shamshi Haider, A.P.P. for the non-applicant /State.

CORAM : ANIL S. KILOR, J.

DATED : 07/07/2022.

1. The applicant is seeking bail in connection with Crime No. 57/2021, registered with Police Station Beltarodi, Nagpur, for the offences punishable under Sections 8(c), 22(c), 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985, Sections 3 and 25 of the Arms Act, 1959 and Section 135 of the Bombay Police Act, 1951.

2. Shri Sunil Manohar, learned Senior Advocate submits that owing to a reason that, M.D. Drug Powder was found with the brother of the applicant who further disclosed the name of the applicant, the present offence came to be registered against the brother of the applicant and the applicant.

3. It is alleged that the disclosure of name of the applicant, on which the prosecution is relying upon was

made when the brother of the applicant was intercepted by police.

4. Shri Sunil Manohar, learned Senior Advocate has pointed out the recovery memorandum under Section 27 of the Indian Evidence Act at record page 85 of the application, and submits that the prosecution is relying upon this document to show that the applicant has confessed before the Police that he used to sell MD Drugs and from the amount received therefrom, he purchased Gold and Silver Ornaments.

5. Learned counsel for the applicant has drawn further attention of this Court to the statement of Pallavi Keshave Damhare and submits that there was physical relations between her and the brother of the applicant. She alleges that she believes that, the amount of Rs. 3 Lakhs extorted by the brother of the applicant, from her was at the instance of the applicant to purchase M.D. Drugs, which was seized by the Police.

6. Shri Sunil Manohar, learned Senior Advocate thus, submits that there is no incriminating evidence of any nature to show the involvement of the applicant in the alleged offence.

7. He further points out that as far as antecedents are concerned, firstly, the nature of the offences are not

similar and secondly out of the eight offences, in four offences the applicant was acquitted and in one case which was registered on a complaint of Pallavi Keshave Damhare, is mainly against the brother of the applicant, wherein the applicant is not involved.

8. He lastly argues that the statement of brother is not admissible to implead the applicant in the alleged offence. For this purpose, he has placed reliance on the judgment of this Court in the case of *Shashikant Prabhu vs Rahul Saini, Intelligence Officer Narcotics Control Bureau, Mumbai and another, dated 21/12/2020 passed on Bail Application No. 198/2019*.

9. On the other hand, learned APP strongly opposes the present application and submits that the total quantity of M.D. Powder, found in possession of the brother of the applicant was 61.94 grams, amounting to Rs. 6 Lakhs and odd.

10. Learned APP has drawn attention of this Court to the memorandum of recovery under Section 27 of the Indian Evidence Act and submits that at the time of recovery of Pistol he had allegedly confessed that he was involved in the present offence.

11. Learned APP further while opposing the present application has relied on the statement of witnesses namely Pallavi Keshave Damhare and Rameshwar

Balkrushnaji Bokde and submits that their statements are sufficient to show the involvement of the applicant in the alleged offence. Accordingly, she prays for rejection of the present application.

12. I have perused the Charge-sheet, First Information Report and Reply of the State.

13. The FIR show that the complainant received secrete information that the person named Ashish Kottulwar, who is the brother of the present applicant, is possessing a Pistol and is about to commit serious offence. Upon such information, he along with Police Personnel and Panchas proceeded to take action and went to Flat No.202, Tirupati Paradise Apartment. On search, the police found Foreign made Pistol with two live bullets with the accused No.1. Upon further search, powder like substance was found, which was subsequently confirmed as M.D. Drug Powder weighing 61.94 Grams and accordingly, the offence came to be registered.

14. During the Seizure Panchanama, accused has allegedly disclosed the name of the applicant as supplier and thereupon, the applicant was arraigned as accused in the present matter. According to the prosecution, said Panchanama is the basis to make the applicant as accused in this case.

15. To show the involvement of the applicant, other evidence on which the prosecution has relied upon is the memorandum under Section 27 of the Indian Evidence Act, statement of witness namely Pallavi Keshave Dambhare and Rameshwar Balkrushnaji Bokde.

16. As far as recovery under Section 27 of the Indian Evidence Act is concerned, it is a settled law that it can be relied upon only for the purpose of recovery. Thus, the submission of the learned APP that at the time of recovery, the applicant has admitted his guilt and involvement in the alleged offence, cannot be accepted.

17. As far as the statements of the witnesses i.e. Pallavi Keshave Dambhare and Ramkrushna Balkrushnaji Bokde are concerned *prima-facie* the same also do not connect the applicant with the alleged offence.

18. The witness- Pallavi Keshave Dambhare, has categorically stated that it is her belief that the brother of the applicant extorted Rs. 3 Lakh at the instance of the applicant to purchase M.D. Powder. However, she is not making any definite statement in this regard.

19. At the same time, the statement of Rameshwar Balkrushnaji Bokde also does not support the case of the prosecution. Thus, statements of both the aforesaid witnesses, *prima-facie*, do not disclose commission of alleged offence by the applicant.

20. It is the case of the prosecution that the applicant is involved in sell of Contraband, however, no evidence establishing the link more particularly, as regard the source wherefrom the applicant used to purchase this Contraband.

21. Thus, in absence of any cogent incriminating material available against the applicant to show his involvement in the alleged offence, I am of the opinion that there is a reasonable ground to believe that the applicant is not guilty in the alleged offence.

22. As far as the antecedents are concerned, the offences are not of similar nature. Furthermore, out of eight offences, in four offences, the applicant was acquitted. Whereas, Crime No. 19/2021 registered on a complaint of Pallavi Keshave Dambhare, under Sections 376, 354(A), 354(B), 323, 504, 342, 278, 506 of the Indian Penal Code is concerned, the allegations are mainly against the brother of the applicant.

23. Thus, considering the nature of offences, which are not of similar nature, I am of the opinion that there is a reasonable ground that, if the applicant is released on bail, there is no possibility that he would commit similar offences. In that view of the matter, I pass the following order :-

- i) The application is **allowed**.
- ii) It is directed that the applicant shall be released on bail in Crime No. 57/2021, registered with Police Station Beltarodi, Nagpur, for the offences punishable under Sections 8(c), 22(c), 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985, Sections 3 and 25 of the Arms Act, 1959 and Section 135 of the Bombay Police Act, 1951, on his furnishing P.R. Bond of Rs.25,000/- with a solvent surety of like amount.
- iii) The applicant shall attend the concerned Police Station on first date of every month between 10.00 a.m. to 12.00 noon.
- iv) The applicant shall not tamper with the prosecution evidence.
- v) The State is granted liberty to move an application for cancellation of bail, in case, the applicant repeats similar offences or breaches any condition of bail.
- vi) The applicant shall not leave the jurisdiction of the concerned Police station without permission of the Court.

The criminal application is accordingly **disposed of**.