

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

Criminal Application (BA) No. 453 of 2022

Mangesh S/o Kamlakar Koli

Versus

State of Maharashtra, through Police Station Officer, Police Station,
Ganeshpeth Nagpur

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

Court's or Judge's Order

Shri Anup Dhore, Advocate for the applicant.

Shri T.A. Mirza, APP for the State / Non-applicant

CORAM : ANIL S. KILOR, J.

DATED : 24th JUNE, 2022.

The applicant is seeking bail under Section 439 of the Code of Criminal Procedure in Crime No. 145 of 2021 registered with Police Station Ganeshpeth, Nagpur for the offence punishable under Section 8(c), 22(c), 29 of Narcotic Drugs and Psychotropic Substance Act, 1985.

2. Learned counsel for the applicant submits that applicant has been arraigned as accused in the alleged offence because on the envelope containing contraband, first name of the applicant was mentioned as a sender alongwith mobile number.

3. He submits that mention of first name and mobile number on the envelop, is not sufficient to connect the applicant with the alleged offence, for the reasons that the said mobile number is in name of Mahesh Koli. He therefore submits that in absence of *prima facie* sufficient evidence against the applicant keeping the applicant in jail for uncertain period amounts to pre-trial punishment. He draws attention of this Court to the fact that applicant is in jail since 23rd September, 2021.

4. He further points out from the inventory that the quantity is not a commercial quantity though in the First Information Report the quantity mentioned is a commercial quantity. Accordingly, he prays for grant of bail.

5. Learned Additional Public Prosecutor strongly opposed the applicant and submits that the statement of Mahesh Koli is sufficient to show that the applicant was using the said mobile number though it was in the name of Mahesh Koli. Accordingly, learned Additional Public Prosecutor prays for rejection of the present application.

6. I have perused the chargesheet and the First Information Report.

7. From the chargesheet, it appears that in a statement of Mahesh Koli, he has stated that mobile number 8652563127 was in his name, however, the applicant was using the same. In addition to this, the first name appears on the envelope containing contraband, alongwith the above referred mobile number, to arraign the applicant as an accused in the present matter.

8. Whether the above referred mobile number was used by the applicant or not is a matter of trial. Similarly, whether the name of person, appears on the envelope is some other person or the applicant is also a matter of trial.

8. However, at this stage, as the investigation is over and the chargesheet is filed, it can be said that the custody of the applicant is not necessary. Moreover, the applicant is in jail since September, 2021 and there is no possibility that the trial will be concluded in near future. The inventory shows that no commercial quantity involved in the present offence. In addition there are no antecedents to the discredit of the applicant. Thus, I am of the opinion that the applicant is entitled for grant of bail.

i. Criminal application is allowed;

ii. It is directed that the applicant shall be released on bail in Crime No. 145 of 2021 registered with Police Station Ganeshpeth, Nagpur for the offence punishable under Section 8(c), 22(c), 29 of Narcotic Drugs and Psychotropic Substance Act, 1985, on furnishing P.R.Bond of Rs.25,000/- with a solvent surety in the like amount;

iii. The applicant shall attend the concerned police station on 1st and 16th day of every month between 10 am to 12 noon till the conclusion of the trial;

iv. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;

v. State is at liberty to apply for cancellation of bail in case the applicant commits similar offence.

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Date: 2022.06.24
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[ANIL S. KILOR, J.]