

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

CRIMINAL APPLICATION (BA) NO.626 OF 2022

Sheikh Irshad @ Monu s/o Sheikh Afasar **Versus** State of Maharashtra, thr. PSO PS Gittikhadan, Nagpur City, District Nagpur.

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

Court's or Judge's Order

Shri S.P. Bhandarkar, counsel a/b Shri Ganesh Mate, counsel for applicant.

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

CORAM : ANIL S. KILOR, J.
DATED : 22/08/2022

1. The applicant is seeking bail in connection with Crime No. 102 of 2020, registered with Police Station Gittikhadan, District Nagpur, for the offences punishable under Sections 20 and 29 of the Narcotic Drugs and Pshychotropic Substances Act, 1985 and Sections 3(1)(i)(ii), 3(2),3(4) of the Maharashtra Control of Organized Crime Act.

2. Shri S.P. Bhandarkar, learned counsel for the applicant submits that, the FIR was registered on 24/02/2020, whereas, the applicant was arrested on 12/10/2020 i.e. after eight months.

3. He submits that, the only basis to arraign the applicant as accused, is a confessional statement of the co-accused.

4. It is submitted that, nothing has been recovered from the applicant. It is submitted that the total quantity

seized in the present offence is 2 kg. 728 grms Ganja which is just about the small quantity.

5. He submits that, in this case, the provisions of MCOC Act have been invoke against the applicant. It is submitted that, in the circumstances, as the quantity is intermediate and since there is no material against the applicant, this Court may released the applicant on bail.

6. Shri Mirza, learned APP strongly opposed the present application and submits that the confessional statement of the father of the applicant who is leader of organized crime syndicates, is sufficient to show the involvement of the applicant in the alleged offence.

7. It is further submitted that, there are criminal antecedents to the discredit of the applicant which were considered while granting sanction for invocation of provisions of MCOC against the applicant.

8. It is pointed out that, with other offences there are three cases registered in the past, against the applicant, under NDPS Act.

9. It is further pointed out that, there are statements of witnesses, recorded by the investigating officer during the investigation, which supports the case of the prosecution against the applicant. Accordingly, he prays for rejection of the present application.

10. I have perused the charge-sheet and the FIR.

11. From the perusal of the charge-sheet, it reveals that the FIR was lodged on 24/02/2020 and the quantity mentioned in it, is intermediate quantity.

12. In the FIR, the name of the applicant was not featured as accused, however, subsequently on the basis of the confessional statement of the co-accused, he was arraigned as accused.

13. The applicant was arrested after eight months the lodgement of the report. Admittedly, when the applicant was arraigned as accused, the only basis was the confessional statement of the main accused who is the father of the applicant. In this case, nothing has been recovered from the applicant and except the confessional statement, there is nothing to show the involvement of the applicant in the alleged offence.

14. As far as the confessional statement is concerned, the Hon'ble Supreme court of India in the case of *State by (NCB) Bengaluru vs Pallulabid Ahmad Arimutta and another*¹ as observed thus:-

“11. It has been held in clear terms in Tofan Singh Vs. State of Tamil Nadu, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is

1 2022 SCC Online SC 47

not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No@ Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless.”

15. Thus, in the circumstances, the offence registered against the present applicant only on the basis of confessional statement, is not sufficient to implicate the applicant.

16. Hence, prima-facie, I am of the opinion that as there is no incriminating material available on record, except the confessional statement, there is a reasonable ground to believe that the applicant is not guilty of the alleged offence. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that in the applicant in Crime No. Crime No. 102 of 2020, registered with Police Station Gittikhadan, District Nagpur, for the offences punishable under Sections 20 and 29 of the Narcotic Drugs and Pshychotropic Substances Act, 1985 and Sectios 3(1)(i)(ii), 3(2),3(4) of the Maharashtra Control of Organized Crime Act, the applicant shall be released on bail on

furnishing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.

- c) The applicant shall attend the concerned Police Station on 1st and 16th day of each month between 10.00 a.m. to 12.00 noon, till the culmination of the trial.
- d) The State is at liberty to move application for cancellation of bail, in case of breach of any condition or the applicant repeats the similar offence
- e) The applicant shall not tamper with the prosecution witnesses.

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

[ANIL S. KILOR, J.]