

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

Criminal Application (BA) No.648/2022

Omkumar Prakash Mardane V State of Maharashtra thr PSO Walgaon, Amravati

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

Court's or Judge's Orders

Shri A.K. Bhangde, Advocate for applicant.
Mrs. Mrunal Barabde, APP for State.

CORAM : ANIL S. KILOR, J.
DATE : 07-07-2022

The applicant has approached to this Court by filing the present application under Section 439 of the Code of Criminal Procedure for grant of bail in connection with Crime No.0174/2022 dated 01-06-2022 registered with Police Station Walgaon, District Amravati city for the offences punishable under Sections 20 (b)(ii), 29, 8(c) of the Narcotics and Psychotropic Substances Act.

2. The learned Counsel for the applicant submits that it is the case of the prosecution that the contraband was recovered from the accused no.1 and when the accused no.1 was intercepted, the accused no.2 i.e. the applicant and the accused no.3 were present on the spot.

3. It is submitted that the prosecution has claimed that

the applicant was present at the time of incident as a purchaser and he intended to purchase the contraband which was seized from accused no.1. He further submits that, however, to support this story there is nothing on record to show that any amount was seized from the applicant. He, therefore, submits that mere presence of the applicant at the spot of the incident is not sufficient to constitute the offence against the applicant.

4. The learned Counsel for the applicant states that the applicant has been falsely implicated in the alleged offence. He points out that the applicant is in service of the Municipal Corporation, Amravati and he is handicapped and there are no criminal antecedents to the discredit of the applicant. Hence, he prays for grant of bail.

5. The learned APP strongly opposed the application and submitted that the quantity found in possession of accused no.1 is a commercial quantity and as the offence is very serious and the investigation is going on, she prays for rejection of the present application.

6. I have perused the case diary and the First Information Report.

7. It is the case of the prosecution that when the Police intercepted accused no.1 he was found with Ganja weighing

3.778 kgs amounting to Rs. 37,000/- It is the further case of the prosecution that accused nos. 2 and 3 were present at the spot as a purchaser as they were intending to purchase the said contraband. However, except one mobile phone, nothing has been recovered from the applicant. Moreover, no amount was found with the applicant, which he carried to purchase the contraband. Thus, it creates doubt about the veracity of the case of the prosecution against the present applicant.

8. There are no criminal antecedents against the applicant of similar in nature or otherwise. The applicant is working in Municipal Corporation, Amravati as a 'Safai Kamgar'. Thus, considering the material collected by the Investigating Officer during the investigation, I am of the opinion that it is reasonable to believe that the applicant is not guilty of the alleged offence.

9. In that view of the fact that there are no criminal antecedents to the discredit of the applicant, it can be said that if the applicant is released on bail, there is no possibility that he will commit the similar offence. In that view of the matter, I pass the following order:-

ORDER

- i) Application is allowed.

ii) The applicant in Crime No.0174/2022 dated 01-06-2022 registered with Police Station Walgaon, District Amravati city for the offences punishable under Sections 20 (b)(ii), 29, 8(c) of the Narcotics and Psychotropic Substances Act, be released on bail on furnishing P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount.

iii) The applicant shall attend the concerned Police Station on 1st and 16th day of every month till 10.00 am to 11.00 am, till the culmination of trial.

iv) Though the observations are made prima facie, the trial Court should not get influenced by any of the observations.

(Anil S. Kilor, J.)