

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

CRIMINAL APPLICATION (BA) NO. 1078 OF 2022

Abdul Wahid @ Khoka s/o Abdul Wajid Quareshi **Versus** State of Maharashtra, thr.
PSO PS Gittikhadan, Nagpur (City), Dist. 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 the
applicant.

Shri Ashirgade, A.P.P. for the non-applicant/State.

CORAM : ANIL S. KILOR, J.
DATED : 07/10/2022

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. The allegations against the applicant is that he is a driver who facilitated the main accused in transporting the contraband and to deliver it. The co-accused Sheikh Irshad has already been released on bail by this Court.

3. The co-accused Sheikh Irshad @ Monu s/o Sheikh Afasar was released on bail by this Court. As far as the antecedents are concerned, there is no commonality.

4. In this crime, the applicant has been arraigned as accused on the basis of confessional statement of co-accused Sheikh Irshad @ Monu s/o Sheikh Afasar. The law in this regard is well settled. The Hon'ble Supreme Court of India in the case of State by (NCB) Bengaluru v/s Pallulabid Ahmad Arimutta and another¹ has 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 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.”

¹ 2022 SCC Online SC 47

4. Thus, from the above well settled law, it can be seen that on the confessional statement of co-accused, cannot be the basis to say that the applicant is involved in the alleged offence. There is no other incriminating material against the applicant. Thus, there is a reasonable ground to believe that the applicant is not involved in the alleged offence.

5. Furthermore, as there is no commonality in antecedents, there is a reasonable ground to believe that, if the applicant is released on bail, there is no possibility of committing the same offence. Moreover, the similarly circumstanced co-accused are released on bail. Accordingly, I pass the following order :-

- a) The criminal application is **allowed**.
- b) It is directed that 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, 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.]