

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2897 OF 2023

Abdul Hamed Abdul Hanif Shaikh ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Ravishankar Dwivedi a/w. Mr. Vikas Salgia, for the Applicant
Smt. Ashwini Takalkar, APP, for the Respondent/State.
API. Pramod Sawant, Nirmal Nagar police station.

CORAM : N. J. JAMADAR, J.

DATE : OCTOBER 17, 2023

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. This application is preferred seeking pre-arrest bail in connection with C.R. No. 548 of 2023 registered at Nirmal Nagar police station for the offences punishable under sections 8(c), 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. A police party of Nirmal Nagar police station was on patrolling duty on 19th September, 2023. Accused No. 1 Mohammad Amin was found in suspicious movements along with a Honda Activa scooter bearing No. MH-02-EL-6351. He was apprehended. A bag was found concealed below the seat of the said scooter. 25 bottles of Welcyrex Cough Syrup, 100 Ml. were found concealed therein. Accused No. 1 was apprehended and the contraband articles were seized after

conducting search in the presence of public witnesses and after apprising the accused of the right to be searched in the presence of a Magistrate. It further transpired that the contraband articles were supplied by the applicant and the applicant gave Rs. 500/- per day to accused No. 1 and the persons to whom the accused No. 1 sold the said articles would directly credit the amount to the account of the applicant.

4. Apprehending arrest, the applicant has preferred this application.

5. The learned counsel for the applicant submitted that the entire case against the applicant is based on the statement of the co-accused. At this stage, apart from the said statement of the co-accused, there is no material to connect the applicant with the alleged offence. Therefore, the applicant deserves the exercise of discretion. It was further submitted that the search and seizure also suffers from the vice of non-compliance of the mandatory provisions contained in section 50 of the NDPS Act.

6. As against this, the learned APP submitted that there is material on record to indicate that on the day of occurrence, the applicant was seen with the accused No. 1. The CCTV footage shows that the applicant was with the accused No. 1 immediately before the seizure of incriminating articles from accused No. 1. The CDR

also reveals the presence of the applicant. As the applicant was immediately named by the co-accused as the person who had supplied the contraband articles and was also receiving the amount from the purchasers, it cannot be said that the applicant was not a privy to the offence.

7. The learned counsel for the applicant joined the issue by submitting that the CCTV footages do not show the applicant handing over the contraband articles to accused No.1, though the applicant was found in the company of the accused No. 1. Since the applicant and the accused No. 1 are the residents of the same locality, the said circumstance does not incriminate the applicant, submitted the learned counsel for the applicant.

8. It is true, at this stage, incriminating material against the applicant is primarily the statement of the co-accused who was found in possession of the contraband articles. It is also trite that a statement of a co-accused does not constitute substantive evidence and cant not be pressed into service to bring home the charge to the accused. At the stage of the investigation, however, the investigating officer would be within his rights to rely upon the said statement to carry out further investigation. Inadmissibility of such statement as substantive evidence, does not preclude its consideration at the state of investigation, for all intent and

purpose.

9. The offences are of a grave nature. They have deliterious effect on the society. Often the syndicates in narcotics work on “need to know” basis. The person who is apprehended with the contraband often does not know the source of contraband beyond his immediate supplier. If a proper investigation is not carried out, the link would get snapped at the person who is found in possession of the contraband articles. Control over narcotics supply and trade would then be a casualty.

10. In the face of the aforesaid material, the discretion cannot be exercised in favour of the applicant without without jeopardising the interest of effective and complete investigation and the larger interest of the society. It is only the custodial interrogation of the applicant that would reveal the source of the contraband articles.

11. For the foregoing reasons, I am not persuaded to exercise the discretion in favour of the accused.

Hence, the following order.

ORDER

1] The application stands rejected.

2] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)

