

Sayali Upasani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 3108 OF 2023

Amina Salim Shaikh

...Applicant

Vs.

The State of Maharashtra

...Respondents

Mr. Gaurav Parkar, for Applicant.

Mr. M. G. Patil, APP for State.

Ms. Manjusha Shirsat, API, Palghar Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATE:- 3rd NOVEMBER, 2023.

PC:-

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

2) This application is preferred for pre-arrest bail in connection with C.R. No. 251 of 2023, registered with Palghar Police Station, for the offences punishable under Sections 8 (c) and 21 (B) of The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3) Pursuant to an intimation, on 16th October, 2023 a raid was conducted at Gandhinagar, Palghar. Accused No. 1- Ganesh alias Tiku was apprehended with 11.93 grams of brown sugar. The prosecution alleges during the course of investigation, it transpired that the applicant was also engaged in the sale of “brown sugar”. Thus, the applicant was directed to join in the investigation.

4) Apprehending arrest, the applicant approached the Court of Session. The learned Additional Sessions Judge declined to exercise the discretion in favour of the applicant holding that the applicant had supplied the contraband article to the accused No. 1.

5) Mr. Parkar, the learned Counsel for the applicant submitted that it was nowhere the case of the prosecution that the applicant had supplied the contraband to the co-accused. What was alleged was that one Ruksana Shaikh had supplied the contraband to the co-accused – Ganesh. It was submitted that the name of the applicant did not figure in the three remand reports and it was only in the fourth remand report, the applicant was shown as the person, who allegedly procured the “brown sugar” from the said Ruksana. Apart from this statement

of the co-accused, there is no material to connect the applicant with the alleged offence.

6) The learned APP, on the other hand, submitted that the applicant was arraigned in the CR No.280 of 2018 for the offences punishable under Sections 15 and 16 of the NDPS Act. While on bail, the applicant had engaged in the instant offence. It was further submitted that the CDR reveals that the accused No. 1- Ganesh had frequently called the applicant.

7) I have carefully perused the material on record. Attention of the Court was also invited to the statement of co-accused – Ganesh. In an offence of this nature, statement of the co-accused is not discarded at the stage of investigation having regard to the fact that the trade in narcotic drugs, runs on ‘need to know basis’. However, in the case at hand, co-accused Ganesh does not state that he had procured the contraband from the applicant. In three remand reports, it was the case of the prosecution that the applicant No. - 1 – Ganesh had procured the contraband from Ruksana. The statement attributed to the accused No. 1- Ganesh is that he and the applicant used to procure the contraband from the said Ruksana.

8) In this backdrop, prima facie there does not seem to be material to show that the applicant had been indulging in the

sale of contraband. Had it been the statement of the person, who either procured from, or sold the contraband to, the applicant, different considerations would have come into play.

9) In this view of the matter, I am inclined to grant interim protection while directing the applicant to join in the investigation.

10) Hence, the following order:-

ORDER

I) In the event of arrest of the applicant in connection with C.R. No. 251 of 2023, registered with Palghar Police Station, for the offences punishable under Sections 8 (c) and 21 (B) of The Narcotic Drugs and Psychotropic Substances Act, 1985, the applicant be released on bail on executing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

II) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

III) The applicant shall co-operate with the investigation and attend Palghar police station on 9th and 10th November,

2023 in between 10.00 am to 1.00 pm and, thereafter, as and when directed by the Investigating Officer.

IV) It is clarified that these *prima facie* observations are confined to determine the entitlement to pre-arrest bail only.

V) The application stands disposed.

[N. J. JAMADAR, J.]