

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

**CRIMINAL APPLICATION (BA) NO.437/2023
Shamrao s/o Vithobaji Dupare and anr**

..VS..

**The State of Mah., thr.PSO City Chandrapur, Tahsil and District
Chandrapur**

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

Court's or Judge's Order

.....
Shri S.V.Sirpurkar, Counsel for Applicants.
Shri A.M.Kadukar, Additional Public Prosecutor for the NA/State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 14/07/2023
PRONOUNCED ON : 20/07/2023

1. By this application, being moved under Section 439 of the Code of Criminal Procedure, bail is sought in Connection with Crime No.595/2022 registered with the non-applicant for offences punishable under Sections 8(c), 21(b), and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act).

2. The applicants are arrested on 1.11.2022 and since then they are in jail.

3. The crime is registered on the basis of report lodged by Assistant Police Inspector Jaiprakash Nirmal of Chandrapur City Police Station, Chandrapur. As per his report, he has received a secret information that a boy namely Ajay Dupare

and his parents are in possession of 'brown sugar' and they are selling the same. Accordingly, a raid was conducted. After witnessing the police, the said boy Ajay fled away from the spot and both the applicants were found with 'brown sugar' in their possession weighing 18.26 milligrams and 14.11 milligrams respectively. On the basis of the said report, the police have registered the crime against the applicants.

4. Heard learned counsel Shri S.V.Sirpurkar for the applicants and learned Additional Public Prosecutor Shri A.M.Kadukar for the State.

5. Learned counsel Shri S.V.Sirpurkar for the applicants, submitted that the applicants are falsely implicated in the alleged crime. There is no criminal antecedent against them. The alleged quantity of 'brown sugar' weighing 376.95 grams is an intermediate quantity and not the commercial quantity. The investigating agency has not complied with Section 50 of the NDPS Act. According to him, as the quantity is not commercial, the limitation under Section 37 of the NDPS Act would not attract. As such, he prayed that the applicants be released on bail.

6. Learned Additional Public Prosecutor Shri A.M.Kadukar for the State, has opposed the application on the

ground that the applicants were found with 'brown sugar' in their possession. They were informed by the investigating agency in view of Section 50 of the NDPS Act by issuing a letter. They declined to search in presence of a gazetted officer. The inventory report shows that the contraband found is 'brown sugar'. If the applicants are released on bail, there is every likelihood that they would involve in the similar type of offence. Hence, the application deserves to be rejected.

7. Having heard both the sides and perused the investigation papers, it reveals that from both the applicants 'brown sugar' weighing 38.07 grams is recovered which is not a commercial quantity. I have perused the First Information Report, recovery panchanama, and Chemical Analyzer's Reports as well as the inventory report. *Prima facie*, it is clear that the applicants were found in their possession the contraband article. As far as their possession with 'brown sugar' is concerned, there is a substantial compliance under Section 50 of the NDPS Act. The quantity of 'brown sugar' recovered from the applicants is not of a commercial quantity as only 38.07 grams is recovered from the applicants which is less than one kilogram.

8. Thus, considering the quantity found in possession of the applicants is less one kilogram, the limitation under

Section 37 of the NDPS would not attract. In this view of the matter, the application can be allowed by imposing certain conditions. Accordingly, I proceed to pass following order:

ORDER

(1) The application is **allowed**.

(2) Applicants Shamrao s/o Vithobaji Dupare and Sau.Rekha w/o Shamrao Dupare, in Connection with Crime No.595/2022 registered with the non-applicant for offences punishable under Sections 8(c), 21(b), and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, be released on bail on their executing a P.R.Bond in the sum of Rs.25,000/- by each of them with one solvent surety of the like amount.

(3) The applicants shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

(4) The applicants shall not leave the jurisdiction of the Chandrapur District Court without prior permission of the said court.

(5) The applicants shall furnish their cell phone number(s) and address with the address proofs.

(6) Needless to mention that the observations made in this order are purely *prima facie* for deciding the present application for grant of bail only and learned Judge before whom the trial will be conducted shall not get influenced by the said observations.

With this, the criminal application stands disposed of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!