

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

**CRIMINAL APPLICATION (ABA) NO. 332/2023**

Shaikh Ashif Shaikh Habib v/s State of Maharashtra

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Office Notes, Office Memoranda of  
Coram, appearances, Court's Orders  
or directions and Registrar's order

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Court's or Judge's Order

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Mr Mahesh V. Rai, counsel for the applicant.  
Mr S.M. Ghodeswar, APP for the State.

**CORAM : URMILA JOSHI-PHALKE, J.**  
**DATE OF RESERVE : 12/07/2023.**  
**DATE OF DECISION : 18/07/2023**

1. Heard.
2. By this application, the applicant is seeking anticipatory bail in connection with Crime No. 1077/2023 registered with Police Station, Gadge Nagar, Amravati for the offences punishable under Sections 20, 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act of 1985').
3. The applicant is apprehending arrest at the hands of the Police. The Police Officer - Yogesh Ingle has lodged a report at Gadge Nagar Police Station, Amravati on 08/02/2023 alleging that on 07/02/2023, at the time patrolling they received secrete information that one Attaur Raman s/o Mohammand Rahman and Ijaz Khan s/o Salim Khan are coming along with contraband articles

i.e. Ganja from Rahatgaon Road to Panchwati Square. After completing all the procedures, the police arrived on the spot for the purpose of the raid and then both the accused persons came on the spot along with bags. The Police caught them and they were searched, Ganja was found by 12.360 kg. Therefore, they were taken into custody and contraband articles and mobile phone were seized. The said report was lodged against the said two persons.

4. The present applicant is apprehending arrest at the hands of the Police, as one of the accused Ijaz Khan s/o Salim Khan disclosed to the police that he is acquainted with the present applicant since childhood, and on the date of the incident, the applicant had come to the spot on the black motorcycle but when the police came, he fled away. Thus, the applicant is apprehending arrest at the hands of the Police as the co-accused made a statement before the Police, and therefore, the police are behind him to arrest. Hence, he is apprehending arrest at the hands of Police.

5. As per the contention of the present applicant that two accused persons who were arrested with the contraband articles are already released on bail. Thus, the main accused are already released on bail. The present applicant is implicated, merely on the basis of a statement

of co-accused which is not admissible. Now, the investigation is completed, the custody of the present applicant is not required and hence, he be released on anticipatory bail.

6. The said application is strongly opposed by the State on the ground that on the basis of secrete information, the trap was made and two accused persons came to be found possessing the Narcotic Substance. Therefore, they were intercepted. After necessary formalities, the said accused were arrested from their possession of 12.360 kg Ganja was recovered and the mobile phone of the co-accused was also seized. During the course of the investigation, the co-accused made a statement and name of the present applicant is disclosed. The CDR report of the mobile phone of the co-accused discloses that they were in touch with the present applicant, before their arrest. From the statement, it discloses that the present applicant who is now as Chintu met them on 07/02/2023 at 11.00 a.m., who asked them to wait at welcome tea point near Jalsa Bar, where they were waiting. At around 5.00 p.m., the present applicant approach to them along with one accused Izaj. The present applicant has also called to another accused who have came on motorcycle and they informed that the Ganja was being delivered to them through one Auto. The accused are accordingly handed over the said

contraband to them. Thus for the purpose of further investigation, the physical custody of the present applicant is required and prays for rejection of the application.

7. Heard Mr M.V. Rai, learned counsel for the applicant. He reiterated the contention that except confessional statement co-accused, no material is on record to show that the present applicant is also involved in the said crime. Though the investigating officer has carried out the necessary investigation, he could not collect the material to show the involvement of the present applicant in the alleged offence. The confessional statement recorded of the co-accused is inadmissible in the evidence. Now entire stock is already recovered, the custodial interrogation of the present applicant is not required. The co-accused who are the main accused are already released on bail. Considering the same, the present applicant be protected by granting anticipatory bail.

8. Per contra, learned APP Mr S.M. Ghodeswar submitted that there is connection between the present applicant and other co-accused. The CDR report shows that there is constant communication between the present applicant and co-accused which shows the involvement of the present applicant with the alleged offence.

9. During the investigation, the statement of the witnesses including Ijaz Khan s/o Salim Khan which reveals that on 07/02/2023 when he was cheat chatting with his friend, present applicant who is known as Chintu approached to him, and disclosed that he has delivered six packets of Ganja. Thereafter, he called one Annu Patel and disclose that one person will approach to them and asked to deliver the said Ganja to him and obtain money from him. Thus the involvement of the present applicant is revealed from the statement of the co-accused Ijaz Khan s/o Salim Khan.

10. During investigation, the statements of the witnesses are further recorded which also discloses that present applicant was having stock of the said Narcotic substance. Thus, there is prima-facie material against the present applicant and therefore, the application for bail deserves to be rejected, as custodial interrogation is required.

11. Having heard both the sides and on perusal of the investigation papers, it reveals that the informant received the secret information and therefore, he prepared for the raid. During his raid, the co-accused were arrested along with Narcotic Substance. During the search of the bags have seized 12.360 Kg Ganja. During the investigation and interrogation with the arrested ac-

cused, the involvement of the present applicant is revealed. During the investigation, the co-accused made a statement that they have procured the said Ganja from the present applicant. The statement further reveals that the present applicant has handed over the said Ganja for delivery to them and asked them to obtain the money. The Investigating Officer has also collected the CDR reports regarding the cell phone of the co-accused and the present applicant which reveals that there is constant communication between the co-accused and the present applicant. The said CDR report filed on record sufficiently shows that the present applicant was in contact with the co-accused and he has handed over the said Ganja to the co-accused for the delivery. Thus, material collected during the investigation shows the involvement of the present applicant with the alleged offence.

12. There is no dispute that the *Hon'ble Apex court in the case of Tufan Singh V/s State of Tamil Nadu reported in (2021) 4 SCC 1* has adjudicated the issue whether the statement recorded under Section 67 of the NDPS Act can be used as confessional statement in the trial for an offence under the NDPS Act and observed that it refers to only to the power to call for information etc.

13. The issue regarding whether the applicant can take advantage of the decision, in the case of **Tufan Singh Vs State of Tamil Nadu referred (supra)**, while seeking anticipatory bail before the Hon'ble Apex Court in the case of *State of Haryana V/s Samarth Kumar reported in 2022 LiveLaw (SC) 622*, wherein the Hon'ble Apex Court held that the respondent may be able to take advantage of the decision in the case of **Tufansingh V/s State of Tamil Nadu** referred (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial. To grant anticipatory bail, in a case of this nature is not really warranted. In this cited case also, the facts were that no recovery was affected from the accused and that they had implicated only on the basis of the disclosure statement of the main accused and the Hon'ble Apex Court made the above observation and held that anticipatory bail in case of this nature is not really warranted and the appeals filed by State are allowed.

14. In view of the observation by the Hon'ble Apex Court, in the present case also, the applicant though implicated on the basis of disclosure statement but the CDR reports and the statement of the witnesses during the investigation shows the involvement of the present applicant.

15. In view of the observation of the Hon'ble Apex Court that the applicant may be able to take advantage of the said decisions, perhaps at the time of arguing regular bail application or at the time of final hearing after conclusion of trial, and considering the material collected during the investigation which shows the involvement of the present applicant is sufficient to show the prima-facie case against him. There is no reason for this Court to take a different view.

16. In view of the observations of the Hon'ble Apex Court and material collected during the investigation which prima-facie shows the involvement of the present applicant. In view of the above, I am not inclined to grant anticipatory bail. Hence, the criminal application for anticipatory bail deserves to be rejected.

The criminal application is accordingly **rejected**.

**JUDGE**