

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

CRIMINAL APPLICATION (ABA)NO. 339/2023

Mohammad Hussain @ Buntu s/o Mohammad Bashir
V/s
State of Maharashtra, thr. PSO PS, Old Kamptee.

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

Court's or Judge's Order

Mr S.H. Sudame, counsel for the applicant.

Mr S.M. Ghodeswar, APP for the respondent/State.

CORAM : **URMILA JOSHI-PHALKE, J.**
DATE FOR RESERVE: 09/06/2023
DATE OF DECISION : 19/06/2023

1. Heard
2. By this application, the applicant is seeking anticipatory bail in respect of crime No. 22/2023 registered by Old Kamptee Police Station, District Nagpur for the offences punishable under Section 22(a), 29 and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and read with Sections 184 and 177 of the Motor Vehicles Act, 1988.
3. The applicant is apprehending arrest at the hands of Police at Kamptee Police Station Registered the offence on the basis of report lodged by P.S.I.

Rajendra Ghute, on an allegation that on 24/01/2023 at about 18.34 (6.34 p.m) was on patrolling duty along with his staff. During the patrolling duty in Borkar Square four persons were found standing in suspicious conditions. They were about to run away after witnessing the police but the Police Personals caught them during interrogation, they informed that they are having Mephedrone Drugs powder for selling. The police conducted the personal search of these four persons in presence of panchas by complying the provisions of NDPS Act. From the said persons, they have seized 3.39 grams Mephedrone Drugs from the co-accused Sayyad Anwarul. On the basis of the said report, Police have registered the crime against the accused persons. During investigation, the involvement of the present applicant is revealed, on the basis of confessional statement of the co-accused. Therefore, the offence is registered against the present applicant also.

4. As per the contention of the applicant, on the basis of confessional statement of co-accused namely Mohammad Aamir @ Mukim Malik, the present applicant is implicated in the alleged offence. There is no other material against the present applicant to show that he is involved in the alleged crime. The investigating officer collected the call details but the

said call details are not sufficient to show the involvement of the present applicant in the alleged offence. The confessional statement of the co-accused is inadmissible and except exceptional statement, no other incriminating material is against the present applicant. Therefore his custodial interrogation is not required and hence he be released on bail in the event of his arrest.

5. The said application is strongly opposed by the State on the ground that during the course of the investigation, investigating officer came to know that co-accused Abhilash Singh @ Sumit Devkarnsing Thakur has supplied the said prohibited substance to the accused persons. He is also arrested on 30/01/2023. The said arrested accused disclosed that one accused namely Mohammad Aamir @ Mukim Malik is also involved in the instant case. He is also arrested on 06/02/2023. During the investigation, the role of the accused No.7 Faizul Husan @ Mohammad Ahmed is also established and he is also arrested. It further reveals during the investigation that, during the course of aforesaid crime, huge money transaction took place through banks and mobile. After obtaining the details of CDR, Bank details, PhonePe details, it was found that the present applicant is involved in the instant crime. During the investigation, it is further

found that present applicant is also involved in other various crime. Therefore, custodial interrogation of the present applicant is necessary. Hence, criminal application deserves to be rejected.

6. Heard learned counsel Mr S.H. Sudame for the applicant. He submitted that except the confessional statement of the co-accused, no material is on record to show that the present applicant is also involved in the said crime. Though 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 trial of an offence under the NDPS Act. Therefore, custodial interrogation of the present applicant is not at all required. In support of his contention, he placed reliance on order passed by this Court in the case of *Latabai Tarachand Malekar V/s The State of Maharashtra, in anticipatory bail application No. 840/2022 decided on 30/03/2022*, wherein the applicant/accused was released on bail by observing that the accused was arrayed as an accused on the basis of the statement of the co-accused. This Court, has taken the assistance of the judgment of the Hon'ble *Seesh Singh @ Mor Vs State of Punjab in*

Criminal Appeal Nos. 822/2020 decided on 02/12/2020.

7. Learned counsel further relied upon order passed by this Court in **Criminal Application No. 76/2023 (Govind Ramjilal Agrawal V/s State of Maharashtra)**, wherein also this court has released the applicant on anticipatory bail as only evidence against the applicant is the confession of co-accused, which is not admissible in evidence, and released the applicant on bail in the event of his arrest. It is submitted by the learned counsel that in the present case also, except the disclosure statement of the co-accused no other material is against the present applicant to connect him with the alleged offence. Hence, he be protected by granting anticipatory bail.

8. Per contra, learned APP Mr A.M. Kadukar submitted that CDR's collected during the investigation sufficiently shows that there was communication between the present applicant and the arrested accused persons. Moreover, several offences are registered against the present applicant including the offence under the provision of NDPS Act. Thus, the present applicant is habitual offender and the application deserves to be rejected.

9. In view of the submissions made by the learned counsel Mr S.H.Sudame for the applicant, I have perused the entire investigation papers. It reveals from the investigation papers that when informant was on patrolling duty, he witnessed four suspecting persons. The police staff along with him caught the said four suspected persons. During their personal search of four suspected persons, the Mephedrone Drugs powder was seized to the extent of 3.39 grams. During the investigation and interrogation with the arrested accused, the involvement of the present applicant is revealed. Initially, accused Abhilash Singh @ Sumit Devakarsingh Thakur came to be arrested from his interrogation. The name of Mohd. Aamir @ Mukim Malik is involved in the instant crime. He was also arrested thereafter. Thereafter, the role of the accused Faizul Hasan @ Mohammad Ahmad is established. During the investigation, the investigating officer has collected the CDR Reports regarding the cell phone or mobile phone of accused namely Ehtesham Shehjad @ Abdul Nabi, who is the accused No.2 arrested by the Police while they were on patrolling duty. Regarding the mobile phone which is owned by accused-2 Ehtesham Shehjad @ Abdul Nabi. The CDR Reports are collected. It reveals from the said CDR report that there was constant communication between the said

accused No.2 Ehtesham Shehjad @ Abdul Nabi and the present applicant. The said CDR reports filed on record sufficiently shows that accused No.2 was not only in contact with the present applicant but also in contact with accused No.1 Sayyed Anwarul @ Sayyed Siddikul Hasan, accused No.4 Abdul Kasif @ Abdul Rauf and present applicant with co-accused Faizul Hasan @ Mohammad Ahmad. Thus from the material collected during the investigation it reveals that there was communication between the present applicant and the co-accused from 01/06/2022 to 24/01/2023. It further reveals that present applicant was also in contact with accused-4 Abdul Kasif @ Abdul Rauf. The CDR Summary details shows that accused No.4 Abdul Kasif @ Abdul Rauf was in contact with the co-accused Ehtesham Shehjad @ Abdul Nabi, Juber Khan @ Abdul Jabbar Khan, Abhilash Singh @ Sumit Devkaransingh Thakur, Mohammad Aamir @ Mukim Malik, and the present applicant. During the investigation, investigating officer has also collected the Bank details of co-accused of arrested co-accused Abdul Kashif @ Abdul Rauf which is also part of the investigation papers. Thus, material collected during the investigation shows that there was continuous communication between the present applicant and

other co-accused in respect of the crime from 01/06/2022 to 24/01/2023.

10. As per the reply filed by the State, there are criminal antecedents against the present applicant.

11. 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.

12. 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.

13. 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 bank records collected during the investigation shows the involvement of the present applicant.

14. Considering 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.

15. 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, the criminal application for anticipatory bail deserves to be rejected.

The criminal application is accordingly **rejected**.

JUDGE