



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

**CRIMINAL APPLICATION (BA) NO. 713/2023**

Mohd. Shahjad Moh. Shafi Vs State of Maharashtra

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

Court's or Judge's Order

Mr. S.P. Bhandarkar, counsel a/b Mr. G.B. Mate, counsel for the applicant.  
Mrs. M.R. Kavimandan, APP for the State.

**CORAM : URMILA JOSHI-PHALKE, J.**  
**DATED : 04/12/2023.**

1. By this application, the applicant is seeking bail in connection with Crime No. 88/2023 registered with the Nandgaon Peth Police Station, Tq. and Dist. Amravati for the offence punishable under Sections 8(C), 21(C) and Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'). The applicant is arrested on 06/03/2023.

2. As per the accusation against the present applicant is that on 02/03/2023, the Police have received a Secrete Information, on perusal of which, the raid was conducted at Meiwani Dhaba, Nandgaon Peth, Amravati, wherein three persons were arrested. From these accused, 150 gram each of Mephedrone (M.D.) was seized from accused No.1 Shoyeb Ahmed Sheikh Hasan and Accused No.2 Ashfak Ashraf Sheikh.

3. It is submitted by learned counsel Mr. Bhandarkar for the applicant that present applicant/accused is arrested merely on the basis of the statement of co-accused. Beside the statement of the co-accused, screen shot of said money transaction is shown, there is nothing on record to show that the present applicant is involved in the alleged crime. He further submitted that from the said transaction, it cannot be concluded that the said money transaction is for purchasing the said contraband from the co-accused.

4. He further submitted that, now it is well settled that the statement of the co-accused showing the involvement of the another accused is not admissible and he placed reliance on *Tofan Singh v/s State of Tamil Nadu, reported in (2021) 4 SCC 1 and Criminal Application No. 2776/2023 of Kerala High Court*, wherein in similar facts of the case, the Kerala High Court has released the applicant on bail by referring the judgment of the Hon'ble Apex Court in *Tofan Singh (supra)*.

5. He submitted that merely on the basis of the statement of the co-accused and merely on the transaction, the involvement of the present applicant is not established. Now, the investigation is completed

and charge-sheet is filed, further custody of the applicant/accused is not required and hence he be released on bail.

6. Learned APP strongly opposed the present application by relying the order of this Court in ***ABA No. 322/2023 (Khushal @ Pappu s/o Ratiram Agade V/s The State of Maha., thr. PSO PS Gondia (City), District Gondia)*** and submitted that, this court has rejected the bail application in another case by observing that the applicant is not unable to take advantage of the decision in the case of ***Tofan Singh referred supra***. She further submitted that the statement of the co-accused and the money transaction is sufficiently shows the involvement of the present applicant with the alleged offence. In view of that, criminal application deserves to be rejected.

7. Having heard learned counsel for the applicant and on perusal of the investigation papers, it reveals that on conducting the raid, the co-accused were found in possession of Mephedrone 150 Gram each in their possession which is seized by the Police. During the investigation, the investigating officer has recorded the statement of co-accused No.3 Khaliloddin Zamiroddin, who disclosed that he used to sell this

Mephedrone to the present applicant and disclosed the mobile number and name of the present applicant.

8. During the investigation, investigating officer has also collected the details regarding the payment, which shows that the some money transaction was taken place between the present applicant and said Khaliloddin.

9. On the basis of said document, learned APP submitted that, the money transaction between the two persons, is sufficiently shows their connection with each other regarding the transaction of selling and purchasing of the contraband articles. After going through the entire investigation papers, admittedly there is no other material collected during the investigation to show that either the present applicant was found in possession of any contraband articles or is involved in the same.

10. From the perusal of the case record, it can be seen that apart from the aforesaid transaction, admittedly there is no single material evidence to show that the present applicant is involved and the monetary transaction between the applicant and other co-accused is regarding the same. Admittedly, the money transaction appears to be there, but it would not be sufficient to connect the present applicant by holding

that the said money transaction is regarding purchasing of the said contraband articles.

11. At this stage, it would not be appropriate to record a finding regarding the same, but the said aspect is sufficient to record the satisfaction of the conditions contemplated under Section 37 of the NDPS Act. The Hon'ble Apex court in the case of **Tofan Singh (supra)**, wherein it is held that the statement recorded under Section 67 of the NDPS Act can be used as a confessional statement in the trial for an offence under the NDPS Act. In para-59 of the said judgment, it is observed that that marginal note to Section 67 indicates that it refers only to the power to "call of information" etc. It is further held by this Court that the said statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement of the accused are released on bail.

12. In another decision ***State (By NCB) Bengalure V/s Pallulabid Ahmad Arimutta and anr, reported in (2022) 12 SCC 633*** wherein also it has been held that in clear terms in **Tofan Singh (supra)** that confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act.

13. In the light of the above observation and considering that except the confessional statement, no other material is on record to connect the present applicant with the alleged offence, the screen shot of the transaction showing that some money is transferred to the co-accused is not sufficient to held that the money was transferred against the purchase of the said Narcotics Substance Drugs.

14. At this stage, in the light of the insufficient material available against the present applicant, the applicant deserves to be released on bail. In view of that, I proceed to pass following order:

- a] Criminal Application is allowed.
- b] The applicant is released on bail in connection with Crime No. 88/2023 registered with the Nandgaon Peth Police Station, Tq. and Dist. Amravati for the offence punishable under Sections 8(C), 21(C) and Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') on furnishing of P.R. Bond of Rs. 50,000/- with one solvent surety of the like amount.

- c] The applicant shall not leave the jurisdiction of the Amravati District Court without prior permission of the Court.
- d] The applicant shall furnish his cell phone number and address with the address proof.
- e] The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

Criminal application disposed of.

**[URMILA JOSHI-PHALKE, J]**