

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

...

CRIMINAL APPLICATION (BA) NO.1249/2022

Kadir Sheikh s/o Gulam Sheikh

.. Applicant

versus

The State of Maharashtra

Th: PSO PS Ganeshpeth, NDPS Cell Crime Branch

Nagpur.

.. Respondent

.....
Mr.A.R.Rawlani, Advocate for the applicant

Mr.N.R.Rode, APP for Respondent
.....

CORAM: ANIL L. PANSARE, J.

DATED : 2nd March, 2023.

PC:

Heard learned counsel for both the sides, at length.

2. This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested on 12.10.2021 in Crime No.442/2021 registered with Ganeshpeth Police Station, Nagpur, for the offences punishable under Sections 8, 22, 29 of the Narcotic Drugs and Psychotropic Substances Act (in short "NDPS Act").

3. Having heard both the sides and having gone through the contents of relevant papers, it transpires that there are three accused namely (1) Mohd. Sohail; accused no.1; (2) Nitin Karingwar, accused no.2 and (3) Kadir Sheikh s/o Ghulam Sheikh (present applicant). The NDPS Cell, on the basis of secret information have apprehended accused nos. 1 and 2 and MD powder was recovered from them. During the course of investigation, involvement of third accused i.e. present applicant was revealed. According to prosecution, the accused no.1-

Mohd.Sohel has purchased the contraband from the applicant. The evidence against the applicant is the whatsapp chat between the applicant and accused no.1-Mohd.Sohel. It shows that the photograph was shared by accused no.1 with the applicant. The photograph is a brown colour packet. However, there is absolutely nothing on record to show that the brown colour packet contains MD powder in question. Another evidence is the call data record. It appears that the applicant and accused no.1 had a telephonic conversation on 29th September, 2022 for about twelve seconds.

4. With the above evidence, though the learned APP has opposed the application, it appears to me that it is quite challenging for the prosecution to prove the complicity of the applicant with the crime and, as such, I am of the view that the applicant is entitled to be enlarged on bail.

5. When enquired the learned counsel for the applicant submits that there are no criminal antecedents and the applicant is a permanent resident of Mumbai and is involved in the business of catering. It is rather unlikely that he will abscond.

6. The charge-sheet has been filed. The charges are framed after filing of the application. It will take time to commence and conclude the trial. In the circumstances and for the reasons recorded in earlier paragraphs, in my considered view, no fruitful purpose would be served by keeping the applicant behind bars. The interest of prosecution can be protected by putting the applicant to appropriate terms.

7. The observations made hereinabove are for the purpose of deciding this Application only and the trial Court shall not get influenced by it.

8. Hence, the following order :

ORDER

- (i) The Application is allowed.
- (ii) The applicant-Kadir Sheikh s/o Ghulam Sheikh, be released on bail, in Crime No. 442/2021 registered with Police Station Ganeshpeth, nagpur , for the offences punishable under Sections 8, 22, 29 of the Narcotic Drugs and Psychotropic Substances Act, on he furnishing P.R. bond in the sum of Rs. 50,000/- (Rupees fifty thousand) with one or two sureties in the like amount.
- (iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number (s) to the Investigating officer and the Court concerned, and shall not change the mobile number(s) and the residence till the final disposal of the case.
- (iv) The applicant shall regularly attend the court and cooperate the learned trial Court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.
- (v) 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 from disclosing such facts to the Court or any Police Officer.
- (vi) The applicant shall maintain law and order.
- (vii) The applicant shall surrender his passport before the Investigating Officer within a period of one week from today. If he does not possess

any passport, he shall file an affidavit to that effect.

(viii) In case of breach of any condition, the learned trial Court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The Application is disposed of in the above terms.

[ANIL L. PANSARE, J.]
sahare

Heard.

2. **Admit.**
3. Call for the record and proceedings
4. Learned APP waives notice on behalf of the Respondent.

CRI.APPA No. 102/2023.

5. The applicants have filed this application under section 389 of the Code of Criminal Procedure. The applicants have been convicted by the judgment dated 13th January, 2023 passed by the learned Additional Sessions Judge in Sessions Trial No. 468/2018 for the offences punishable under Sections 332, 353, 186, 504, 506 r/w Section 34 as well as Section 143 of the Indian Penal Code in Crime No.211/2016. It is submitted that the applicants have already paid the fine amount.

6. The learned counsel for the applicants submits that the applicants were on bail pending trial. He further submits that after pronouncement of the judgment, the execution of sentence of the appellants has been suspended. The Appeal is filed within time. He further submits that there are no allegations that the applicants have misused the liberty while on bail. There are no criminal antecedents. They possess good case on merits.

7. Issue notice to the respondent, returnable on 15.02.2023.

8. As an interim arrangement, the execution of the sentence imposed upon the applicants by judgment and order dated 13th January

2023 passed by learned Additional Sessions Judge, Nagpur in Sessions Trial No. 486/2018 for the offences punishable under sections 332, 353, 186, 504, 506 r/ws. 34 as well as Section 143 of the IPC, is hereby suspended, on the following conditions :

- (i) The applicants shall furnish PR bond in the sum of Rs. 25,000/- each, with one solvent surety in the like amount before the lower Court.
- (ii) The applicant shall remain present before this Court at the time of final hearing of the Appeal.

[ANIL L. PANSARE, J.]

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ADV APPOINTED.

The respondent No.2 victim is present in the Court and seeks legal aid.

Ms.Mohini A.Sharma, Advocate, who is on the panel of High Court Legal Services Sub-Committee, Nagpur is appointed to represent/ defend the Respondent No.2. At her instance, stand over to 17.02.2023.

[ANIL L. PANSARE, J.]

sahare

SAME JUDGE

The learned Advocate for the applicant submits that this Court (Rohit B.Deo, J) has passed the following order dated 12th October 2021 in Criminal Application (BA) No. 1017/2021 filed by the present applicant :-

- “ *I was not inclined to grant bail.*
2. *The learned counsel for the applicant Mr. Londhe submits that instead of rendering an elaborate order the application be dismissed as withdrawn.*
 3. *The application is dismissed as withdrawn*
 4. *The learned trial court is requested to expedite the trial.*
 5. *If there is no significant progress in the trial in the next six months, the applicant shall be at liberty to approach this Court afresh for bail provided the applicant brings this order to the notice of the learned trial Court within the next seven days and further provided that the delay is not attributable to the*

applicant”.

2. The learned counsel for the applicant and the learned APP are *ad idem* on the point that the Application lie before the same Bench in terms of the decisions of the Hon’ble Apex Court, viz - (i) M.Jagan Mohan Rao vs. PV. Mohan Rao and another : (2010) 15 SCC 491; (ii) Shahzad Hasan Khan vs. Ishtiaq Hasan Khan and another : (1987) 2 SCC 684; and (iii) Harjeet Singh alias Seeta vs. State of Punjab and another: (2002) 1 SCC 649.

4. Registry to process accordingly.

INSTRUCTIONS:

Learned APP to take instructions as to why the Respondent is not yet served. Stand over to....

I.O. TO REPORT :

Heard.

The FIR is said to have been lodged on The final report is not yet served.

The concerned Investigating Officer to file a report as to why the final report is not filed, as yet. The report should also indicate whether the custodial interrogation of the applicant is/was necessary. If yes, what efforts were made to arrest the applicant when he was not under protection and, if no, why is the final report not filed.

Interim order to continue. Stand over to.....

COSTS.

Notice could not be issued to Respondent No.2 for want of supply of copy. The copy be supplied within two working days else costs of Rs. 1000/- shall be deposited by the applicant with the Registry of this Court which, in turn, shall be paid to Legal Services Sub-Committee, Nagpur. If the copy is supplied, issue notice to Respondent No.2, made returnable on.....

[ANIL L. PANSARE, J.]

sahare

Learned APP to take instructions as to why the Respondent is not yet served. Stand over to....

APPA Nos. 1107/2022 & 1132/2022

(ACCUSED GRANTED BAIL, TO BE RELEASED FROM JAIL U/S
389: SUSPENSION OF SENTENCE)

4. Heard.

5. The applicants were in jail pending trial. They were arrested on 15th June, 2019. The judgment impugned is dated 13.10.2022. Thus, the applicants are in jail for about three years and eight months. The maximum punishment imposed is ten years and fine. The learned senior counsel submits that the fine amount has already been paid.

6. In the order dated 17.02.2023, submissions made by the learned senior counsel have been recorded. It appears that the contraband has not been produced in the Court during the entire trial and that therefore the same has not been identified by the witness. He further submits that polythene packets which were recovered from accused nos. 1 and 2 and these packets were opened and spread on the piece of paper, which exercise ought to have been carried out before the learned Magistrate under section 52 of the Narcotics and Psychotropic Substances Act, but has not been done by the Investigating Officer. It necessitates relook at the entire evidence. Thus, there is arguable case in favour of the applicants.

7. When enquired, the learned counsel for the applicants submits that except this crime, there are no criminal antecedents against both the applicants. The applicants are R/o Nagpur. Their family members have immovable properties in Nagpur and as such, they possess strong roots in the society

8. In view of the above, this is a fit case where the execution of sentence should be suspended. Hence the following order :

ORDER

The execution of the sentence imposed upon the applicant- (1) Imran Dalla s/o Ilyas Dalla and (2) Mujahid Ahmed s/o Mohd. Asraf, by judgment and order dated 13.10.2022 passed by learned Special Judge (NDPS) Court, at Nagpur in NDPS Case No.70/2019 for the offences punishable under sections 21(C) read with Section 29 of the NDPS Act, is hereby suspended and they are directed to be released on bail, on the following conditions:

- (i) The applicants shall furnish PR bond in the sum of Rs. 50,000/- each, with one solvent surety in the like amount before the lower Court.
- (ii) The applicants shall remain present before this Court at the time of final hearing of the Appeal.

Both Applications are disposed of in the above terms.

[ANIL L. PANSARE, J.]

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(Amesh Kumar and Satendra Antil)

Heard both sides.

2. The applicant is apprehending arrest in Crime No.1089/2022 registered with Ramnagar Police Station, Dist. Wardha for the offences punishable under Sections 385, 341, 504, 506 of the Indian Penal Code and Sections 3,5, 25 of the Arms Act.

3. Learned counsel for the applicant submits that the maximum punishment for the offences alleged is of seven years. If that be so, the Investigating Officer is bound by the law laid down by the Hon'ble Apex

Court in the cases of Amesh Kumar vs. State of Bihar reported in (2014) 8 SCC 273 & Satender Kumar Antil vs. C.B.I. and another reported in (2002) 10 SCC 51.

4. Issue notice to the non-applicant, returnable on 08.03.2023. Learned APP waives notice for the non-applicant/State. The Investigating officer to make a statement whether intimation has been given to the learned Magistrate of the decision not to arrest the applicant if so taken.

5. The learned counsel for the applicant has invited my attention to the order dated 23.02.2023 passed by the learned Sessions Court. The Court, while rejecting the application, has extended the interim anticipatory bail for three days.

6. The interim relief so granted to continue till the returnable date, with a condition that the applicant to attend the Police station if called.

Put up on 8th March, 2023