



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

CRIMINAL APPLICATION (BA) NO. 1018 OF 2023

Suraj S/o Shankar Pohankar

..VS..

State of Maharashtra through P.S.O., P.S. Kapil Nagar, Nagpur (City)

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

Court's or Judge's orders

Mr. A.K. Bhangde, Advocate for applicant.

Mr. S.S. Hulke, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : DECEMBER 12, 2023

Heard.

2. By this application the applicant is seeking bail in connection with Crime No.455/2023, registered with Police Station Kapil Nagar, Nagpur (City) for an offences punishable under Sections 22(B), 29 and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'NDPS Act'). The applicant is arrested on 06.10.2023.

3. As per the accusation against the present applicant that on 06.10.2023, the Assistant Police Inspector Rajendra Popat Yadav, who is attached to the Kapil Nagar, Police Station, Nagpur (City) was called by Senior Police Inspector and disclosed that he has to perform the patrolling duty along with the other staff to conduct the raid on illegal activities of drugs and etc. Accordingly, he proceeded, when he reached near Power Grid square to

Patankar square and while he was proceeding near Prabodhan Apartment, Angulimal Nagar, he noticed three persons were standing by parking their motorcycles. The informant suspected the activities of the said persons and he reached near the Prabodhan Apartment. It is alleged that three persons tried to flee away but they were encircled by the police at about 04.00 p.m. Thereafter in presence of panchas the search was carried out. During the search of these three persons, the 2.42 gm. Mephedrone (M.D.), one cellphone and one motorcycle was seized from the accused namely Nehal @ Sanni Ramkripal Malik, one cellphone was seized from the present applicant and one cellphone and one motorcycle was seized from the other co-accused i.e. Aaditya Chandrashekhar Bushettiwar.

4. It is submitted by the learned Counsel for the applicant Mr. Bhangde that merely on the basis on the confessional statement of the co-accused, present applicant is implicated, in fact, nothing is seized from him. The confessional statement of the co-accused is not sufficient to show the involvement of the present applicant. During investigation, the Investigation Officer though enquired with the present applicant, however, nothing incriminating can be brought on record in the form of charge-sheet and therefore, no *prima facie* case is made out against the present applicant, in view of that he be released on bail. In support of his contention, he placed reliance on the order of this Court in ***Mohd.***

Shahjad Moh. Shafi Vs. State of Maharashtra (Criminal Application (BA) No. 713/2023) decided on 04.12.2023, wherein this Court has considered the judgment of the Apex Court in ***Tofan Singh Vs. State of Tamil Nadu***, reported in ***(2021) 4 SCC 1***. He further submitted that it is held by the Hon'ble Apex Court in the case of the ***Tofan Singh*** (supra) that mere confessional statement of the co-accused is not sufficient to attract the charges against the other co-accused. He submitted that merely on the basis of the statement of co-accused, the involvement of the present applicant cannot be established. Now investigation is completed, charge-sheet is filed and further custody of the application is not required and hence he be released on bail.

5. Learned APP strongly opposed the present application on the ground that the drugs like Mephedrone (M.D.) is seized from the co-accused and on the basis of statement of the co-accused, the involvement of the present applicant is revealed. If he released on bail, there is every chance of involvement in the similar type of offence. In view of that, the criminal application deserves to be rejected.

6. Having heard the learned Counsel for the applicant and learned APP for the State and on perusal of the investigation papers, it reveals that on conducting the raid, the co-accused Nehal @ Sanni Ramkripal Malik was found in possession of Mephedrone (M.D.), which is seized by the police. Though present applicant and

another co-accused was searched, however, nothing incriminating is found in their possession. It further reveals that on the basis of the statement of the co-accused, the present applicant is shown as an accused in the present charge-sheet.

7. Perusal of the investigation papers, it reveals that during the patrolling duty, the applicant along with the other co-accused were restrained and on personal search of the co-accused, the contraband article like Mephedrone (M.D.) of 2.42 gm. was seized, which is an intermediate quantity. Except the statement of the co-accused, nothing is placed on record by the Investigating Agency to show the involvement of the present applicant. Learned Counsel submitted that being a friend of the co-accused, the applicant was along with the co-accused, he was not having knowledge that the co-accused was carrying the contraband article. He placed reliance on the decision of the ***Tofan Singh*** (supra). The Hon'ble Apex Court in the case of ***Tofan Singh*** (supra), wherein in para-59 of the said judgment, it is observed 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 and accused are released on bail.

8. In another decision State (***By NCB***) ***Bengallure Vs. 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.

9. 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. Mere presence of the present applicant with the other co-accused is not sufficient to attract the charges. 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 :

- i) The Criminal Application is allowed.
- ii) The applicant – Suraj S/o Shankar Pohankar is released on bail in connection with Crime No.455/2023, registered with Police Station Kapil Nagar, Nagpur (City) for the offences punishable under Sections 22(B), 29 and 8(c) of the NDPS Act, on executing PR. bond in the sum of Rs.50,000/- with one solvent surety in the like amount.
- iii) The applicant shall furnish his cellphone number and address with the address-proof along with the names of his two relatives and their address proof.

- iv) The applicant shall shall not leave the jurisdiction of the Nagpur District Court without prior permission of the Court.
- v) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness who are acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any other Police Officer.

The Criminal Application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Kirtak