



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

CRIMINAL APPLICATION (BA) NO. 1033/2023

NITIN @ JITENDRA S/O. KHILANSINGH RAGHUANSHI
VS
STATE OF MAH. THR. PSO, PS, (NEW) KAMPTTEE, NAGPUR.

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

Court's or Judge's Order

Mr. A.K. Bhangde, counsel for the applicant.
Mr. Hulke, APP for the State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 08/12/2023.

1. By this application, the applicant is seeking bail in connection with Crime No. 346/2023 registered with the New Kamptee Police Station, District Nagpur for the offence punishable under Sections 20 (b), 8(C), 21(C) and Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') vide crime No. 346/2023. The applicant is arrested on 02/08/2023.

2. As per the accusation against the present applicant is that on 28/07/2023, Police Inspector Pramod Pore was on duty. He decided to perform the patrolling duty and during patrolling at about 4.00p.m., he restrained two wheeler bearing MP-40-MX-5147. After seeing him, the two-wheeler rider tried to flee away, therefore he suspected and gave a phone call to

the station officer and called Panchas. After the bag of the said person was searched, it contained the Ganja. Accordingly, the raiding party members have seized 22.135 K.G Ganja worth of Rs. 2,65,620/-. On the said spot, two persons namely Jitendra Malamsingh Raghuwanshi and Surendra Tores Sen were arrested.

3. The learned counsel Mr. Bhangade submitted that the present applicant is arrested merely on the basis of the statement of the co-accused which is not admissible. Nothing is recovered from the present applicant. The investigation papers nowhere show the link between the co-accused and the present applicant. There is absolutely no material to show the connection between the two persons. There are no criminal antecedents against the present applicants. Merely on the basis of the statement, the incarceration of the present applicant is not sustainable and he be released on bail.

4. The learned APP strongly opposed the present application on the ground that there is a prima-facie material i.e. the statement of the co-accused which shows the involvement and the connection between two persons. From the statement, it reveals that the arrested accused have obtained the contraband

articles from the present applicant. In view of that bail application deserves to be rejected.

5. Having heard learned counsel for the applicant and on perusal of the investigation papers, it reveals that admittedly the present applicant was not found on the spot and he has been implicated merely on the basis of the statement of the co-accused. After going through the investigation papers, admittedly there is no material, except the statement of the co-accused to connect the present applicant showing that the co-accused have obtained the contraband articles from the present applicant. During the investigation, the investigating officer though recorded the various statements, and drawn the panchanamas but nothing is recovered from the present applicant. Thus, except the material in the nature of the statement of the co-accused, no other material is on record to connect the present appellant.

6. At this stage, it would not be appropriate to record a finding whether the applicant is involved in supplying the contraband articles, but while considering the application for grant of bail, the Court has to satisfy itself that there is a satisfaction of the conditions contemplated under Section 37 of the NDPS Act. The Hon'ble Apex Court in the case of **Tofan Singh**

v/s State of Tamil Nadu, reported in (2021) 4 SCC 1, wherein it is held that the statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement against the co-accused. 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 are released on bail.

7. In another decision ***State (By NCB) Bengaluru 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 referred 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.

8. In the light of the above observation and considering that except for the confessional statement, no other material is on record to connect the present applicant with the alleged offence, the mere statement of the co-accused is not sufficient to show involvement of the present applicant, as far as his role, as per the statement of the co-accused is concerned.

9. 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. 346/2023 registered with the New Kamptee Police Station, District Nagpur for the offence punishable under Sections 20 (b), 8(C), 21(C) and Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on furnishing of P.R. Bond of Rs. 50,000/- with one solvent surety of the like amount.
- c] The applicant shall furnish the local surety.
- d] The applicant shall furnish his cell phone number and address with the address proof along with names of the two relatives and their address with 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.

The criminal application is disposed of accordingly.

[URMILA JOSHI-PHALKE, J]