



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 CRIMINAL REVISION APPLICATION NO. 73 OF 2024

Chetan @ Jagannath Shankar Patil

..APPLICANT

-VERSUS-

The State of Maharashtra

..RESPONDENT

Advocate for Applicant : Mr. S.S. Ghodke

APP for Respondent/State : Mr.Dipali S. Jape

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 9th MAY, 2024.

PER COURT :-

1. This revision is directed against the impugned order dated 10.10.2023 passed below Exhibit-12 by the learned Special Judge, Dhule in Special Case No. 24 of 2023. It was application seeking discharge from the offences punishable under sections 8(c), 18 and 19 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The applicant contended that he is falsely implicated in the crime. There is no material to proceed against him. Therefore, he prayed for discharge under section 227 of the Criminal Procedure Code.

2. The learned advocate for the applicant pointed out that the name of the applicant is not mentioned in the report. The applicant is falsely implicated in the crime on the basis of statement

of the co-accused. He cannot be held liable. Nothing is seized at the instance of the applicant. He further pointed out the reasons given by the trial Court in para 8 of the impugned order are not legal and sustainable. There is no sufficient ground to proceed against the applicant in the trial. He therefore prayed to quash and set aside the said order.

3. The learned APP for the respondent-State strongly opposed the application and pointed out the fact that the earlier application bearing Criminal Application No. 3991 of 2023 was withdrawn by this applicant, and therefore, it was dismissed by order dated 13th February, 2024. She further pointed out the statement of witnesses and the reasons given by the trial Court in para 8 of the impugned order. She submitted that the applicant ran away, therefore, he was not caught hold there. It is a matter of evidence as to whether the applicant ran away while other accused were caught hold. She therefore prayed to reject the application.

4. The learned advocate for the applicant is relying upon the authority in the case of **Tofan Singh Vs. State of Tamil Nadu** decided on 29th October, 2020 in Criminal Appeal No.152 of 2013, wherein in para nos.152 and 155 it is held as under :-

“152. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under section 42 or section 53 can be the basis to convict a person under the NDPS Act, without any *non obstante* clause doing away with section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.

155. We answer the reference by stating :

(i) That the officers who are invested with powers under section 53 of the NDPS Act are “police officers” within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”

5. He submitted that the confession of the co-accused against the applicant given before the Investigation Officer is not admissible.

6. Perused the charge-sheet and particularly report and the statements of the witnesses. In the impugned order, the trial Court held that there is sufficient material available on record against the applicant, but it is not observed that what is that sufficient material. At the instance of this applicant nothing was seized. Even there are no call details to establish that the applicant used to call to the co-accused in this case. The applicant has no criminal antecedents. The alleged confession of co-accused against the applicant is not admissible. In view of the ratio laid down in the case of **Tofan Singh (supra)** and considering all these aspects, there is no sufficient reasons to proceed against the applicant as contemplated under section 227 of the Criminal Procedure Code. The application would have been allowed by the trial Court. However, the reasons and findings given by the trial Court are not legal and acceptable. Therefore, the application deserves to be allowed. The impugned order passed below Exhibit 12 dated 10.10.2023 deserves to be set aside and the said application below Exhibit-12 deserves to be allowed. Hence the following order :-

O R D E R

- I. Revision Application is allowed in terms of prayer clauses "A" and "B".

- II. The impugned order is set aside and the application below Exhibit-12 is allowed. The applicant is discharged.

(SANJAY A. DESHMUKH, J.)

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