



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1051 OF 2024

Sultana Raj @ Rajmohammed Shaikh

VERSUS

The State Of Maharashtra

- Mr. A. A. Joshi h/f Mr. S. V. Natu, Advocate for the Applicant
- Ms. M. L. Sangit, APP for the Respondent/State

CORAM : R.M. JOSHI, J

DATE : OCTOBER 15, 2024

PER COURT :

1. Applicant apprehends arrest in connection with Crime No. 444/2024 registered with Tophkhana Police Station, Dist. Ahmednagar for the offences punishable under Sections, 8(C) & 20(B)(II)(C) of the Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act').

2. First information report indicates that secret information was received with regard to possession of the Ganja by a person at Vaiduwadi near Bholeshwar Tea Center. Accordingly, along with panch witnesses the said place was raided. The said place is tea stall near Suresh Kirana Store, Vaiduwadi. Police offered their

search, which was denied by the persons present there. In presence of panch witnesses, the said place was searched and Ganja was found about 2 kg and 460 gms. Same was seized at the spot. Applicant apprehends arrest as it is claimed in the FIR that the person who was accosted has named present Applicant to be the supplier of the said contraband articles.

3. Learned Counsel for the Applicant submits that now the investigation is over and charge-sheet is filed. However, according to him, in the entire charge-sheet there is absolutely no evidence to indicate involvement of the Applicant therein. It is submitted that though it is alleged in the FIR that the co-accused Macchindra made statement to the police about the contraband articles being bought from Applicant, no such statement is recorded of the accused. He relied upon following judgments/orders of the Hon'ble Supreme Court in order to contend that on the basis of the statement of the co-accused, involvement of any person cannot be presumed in the crime: Vijay Singh vs. The State of Haryana, Special Leave to Appeal (Crl.) No. (s).1266/2023, decided on 17.05.2023 & Faisal Mushtaq

Shaikh vs. The State of Maharashtra, ABA/2097/2023. He, therefore, seeks pre-arrest bail.

4. Learned APP opposed the Application essentially relying upon the order of the Coordinate Bench of this Court passed in *Mehrun Aslam Samlewale vs. State of Maharashtra, Anticipatory Bail Application No. 999/2024.* It is her contention that by taking into account the judgment of the Hon'ble supreme Court, this Court has held that even statement of co-accused is sufficient to consider the involvement of the Applicant in the crime under the provisions of NDPS Act. She has also relied upon the judgment of Hon'ble Supreme Court in case of *Muraleedharan vs. State of Kerala, (2001) 4 SCC 638* to oppose the pre-arrest bail.

5. Provision of Section 37 of the NDPS Act provides that no person accused of an offence punishable under Section 19 or Section 24 or Section 27 and also for offence involving commercial quantity, shall be released on bail unless public prosecutor is given opportunity to oppose the application for such release and where the Court is satisfied that there are reasonable ground for believing that he is not guilty

of such offence and that he is not likely to commit any offence while on bail. The said provision, therefore, makes it clear that when the Court has reason to believe that the Applicant is not guilty for the offence alleged against him or that he is not likely to commit any offence while on bail, there is not embargo to grant bail and applying the same principle, there cannot be any impediment in granting pre-arrest bail.

6. It is settled law that in order to ascertain the involvement of the Applicant in the crime, even at *prima facie* stage, there has to be at least some evidence to indicate so. In the instant case, except for a reference in the FIR that the co-accused has disclosed to the police about contraband articles being purchased from present Applicant, there is absolutely no evidence on record to indicate so. Needless to say that the statement of the co-accused made to the police is not admissible evidence in the Court of law. As rightly pointed out by the learned Counsel for the Applicant, there is not even a statement recorded of the co-accused in order to call such statement as a confessional statement and if it is inculpatory, the

same can be used against the Applicant.

7. The Hon'ble Supreme Court in the judgments cited supra has in no uncertain terms has held that merely on the basis of the statement of the co-accused and, when there is no other material to implicate a person in the crime, anticipatory bail cannot be denied. As far as order of this Court in Mehrun Aslam Samlewale (supra), the facts of the said case, as reproduced in paragraph 10, indicate that apart from the statement of the co-accused, there was evidence to indicate that the contraband articles were seized from the premises belonging to the Applicant therein. Apart from this, there were antecedents against Applicant and his son. In the light of these facts, the Coordinate Bench of this Court has refused anticipatory bail. In considered view of this Court, the said order would not help the prosecution in any manner as the facts of the said case materially differ from the present case.

8. In the instant case, except for the statement as it appears from the FIR, neither statement of co-accused on record nor there is any other evidence to consider the involvement of the Applicant in this

crime. It is not the case of the prosecution that the Applicant has any criminal history behind her. This Court, therefore, finds no substance in the contention of the learned APP that this is not a fit case for grant of anticipatory bail.

9. If the contention of the learned APP is accepted that only on the basis of the statement of the co-accused anticipatory bail cannot be granted, then the same will be against the settled principles of law as well as it will lead to possibility of false implication of any person in such serious crime. It is never contemplated by the legislature that in absence of any evidence showing involvement of any person in the crime, his liberty cannot be protected.

10. Since charge-sheet is filed and as there is absolutely no evidence to *prima facie* hold involvement of the Applicant in this crime, and as the Applicant is lady, it is a fit case for protecting her liberty. In the result, Application is allowed. Hence, the order:

O R D E R

- (i) In the event of arrest of the Applicant in connection with C.R. No. 444/2024 registered with Tophkhana Police Station, Dist.

Ahmednagar for the offences punishable under Sections 8(C) & 20(B)(II)(C) of the Narcotic Drugs and Psychotropic Substances Act, Applicant shall be released on bail on furnishing PR bond of Rs. 15,000 (Rupees Fifteen Thousand Only) with one surety in the like amount.

- (ii) Applicant shall attend the concerned police station as and when required.
- (iii) Applicant shall not contact the witnesses directly or indirectly.
- (iv) Applicant shall not interfere with the evidence in any manner whatsoever.

(R.M. JOSHI, J.)