



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1496 OF 2024

Shaikh Azhar Shaikh Hafiz

VERSUS

The State Of Maharashtra

- Mr. A. T. S. Patel, 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. 131/2024 registered with Vedant Nagar Police Station, Dist. Aurangabad for the offences punishable under Sections 21(b), 22(B), 29, 8(c) of the Narcotic Drugs and Psychotropic Substances Act (for short '**NDPS Act**') & Section 135, 37(1) of the Maharashtra Police Act.

2. First information report indicates that police had received secret information with regard to the contraband articles being brought in a bus. Accordingly, trap was laid at about 09.45 pm at Panchwati Corner near bus parking ground. It was found that a travel bus bearing registration No. NL-01-B-1906

came to the parking ground and halted there. A person wearing yellow colour shirt and blue jeans came near the bus. The driver of the bus handed over a plastic bag to the said person. Immediately thereon he was accosted and searched. It was found that in the said plastic bag there was one box of sweets another box of soan papdi. When the said packet was opened, it was found that there were four packets of Nitrosun 10. In one packet there were two strips each of 22 pills were also found. In the sweet box one packet was found with white colour powder. The said power was weighed at the spot and it was found to be 5.07 gms. It is the case of the prosecution that the said power was mephedrone drug (MD). On the basis of said FIR, offence came to be registered.

3. Present Applicant apprehends arrest as it is stated by the co-accused who was accosted at the spot that at the instance of present Applicant, these contraband articles are brought. He also stated about the said articles being brought from Nagma Shaikh, Mumbai.

4. Learned Counsel for the Applicant submits that

in view of the judgment of the Hon'ble Supreme Court, on the basis of the statement of co-accused, involvement of the Applicant in the crime cannot be presumed. It is his submission that in view of following judgments of the Hon'ble Supreme Court, the anticipatory bail cannot be refused on the said ground: 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. With regard to contention of learned APP about there being CDR indicating conversation between the co-accused and Applicant, it is his submission that since the Applicant runs a travel agency, in ordinary course of business he was in contact with the co-accused, who is driver. This, therefore, according to him, does not amount to incriminating circumstance against him. It is his submission that without there being any evidence against Applicant, pre-arrest bail application cannot be rejected.

5. Learned APP opposed the Application with submission that this is not the case wherein there is only evidence of the co-accused and that there is no

other evidence in order to connect Applicant with this crime. It is her submission that the travel bus in which the sad contraband articles are transported, is being run by the present Applicant. It is her further submission that there is CDR indicating the contact between Applicant and the co-accused, which according to her, is sufficient to connect him with this crime. In order to support said submissions, she relied upon the order of Coordinate Bench of this Court in **Mehrun Aslam Samlewale vs. State of Maharashtra, Anticipatory Bail Application No. 999/2024.**

6. Perusal of the judgment/order of the Hon'ble Supreme Court clearly indicates that if there is only statement of the co-accused with no other evidence to connect Applicant with the crime, his pre-arrest bail Application cannot be rejected. No doubt, in case where there is only statement of the co-accused, there is no reason or justification to reject anticipatory bail. The question arises as to whether the said principle would apply when there is other evidence to *prima facie* accept involvement of the Applicant in the crime and in that case whether he would be entitled for pre-arrest

bail.

7. The Coordinate Bench of this Court in case of Mehrun Aslam Samlewale (supra) after taking into consideration judgments of the Hon'ble Supreme Court and in view of the fact that there was a seizure of the contraband articles from the premises of the Applicant, has rejected anticipatory bail. It is observed that considering seriousness of the crime, sufficient opportunity will have to be given to the investigation agency to ascertain as to how the main accused is involved in the said offence.

8. In the instant case, apart from the statement of the co-accused, there is evidence to indicate that the bus in which the contraband articles were transported was run by the present Applicant. There is also evidence in the form of conversation between both accused persons as reflected from CDR. Thus, apart from the statement of the co-accused, there is other evidence to show *prima facie* involvement of the Applicant in this crime. The defence taken by the Applicant in respect of conversation is not available at this stage. Thus, this is not the case that there is

only statement of co-accused but there is other material to indicate *prima facie* involvement of Applicant in this crime, at least for purpose of enabling the investigating agency to conduct custodial interrogation of Applicant. The offence is serious in nature and that the custodial interrogation of the Applicant is necessary to ascertain link between the procurement and distribution of the contraband narcotic substance. Hence, this Court finds no reason to grant pre-arrest bail. In the result, Application stands dismissed.

(R.M. JOSHI, J.)