



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 CRIMINAL REVISION APPLICATION NO. 349 OF 2023

Shaikh Asif S/o Shaikh Jilani

VERSUS

The State of Maharashtra

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Advocate for Applicant : Mr. Syed Moisalil Amjedali

APP for Respondent: Mrs. Pratibha J. Bharad

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CORAM : SANJAY A. DESHMUKH, J.

DATED : 1st MARCH, 2024.

PER COURT :-

1. This criminal revision application is directed against the charge framed against this applicant by Special Judge, Aurangabad, under section 328 of the Indian Penal Code 1860 (for short "I.P.C.") and Sections 18(a), 18(c), 27(b) (ii) of the Drugs and Cosmetics Act below Exh. 87 in Special Case No. 326 of 2022, in connection with the F.I.R. No. 186 of 2022 dated 17.8.2022 registered with Osmanpura police station, Aurangabad.

2. One Nasim Khan Shabbir Khan lodged a report that on 16.8.2022 while patrolling, one Shri Ghuge informed him that two unknown persons came to sale some tablets of psychotropic substance. Thereafter, after completing all formalities, immediately they went to petrol pump with all officials. One person, who was trying to run away, apprehended by staff and 93 tablets were seized from his possession. A crime No. 186 of 2022 was registered at

Osmanpura police station, Aurangabad on 17.8.2022.

3. The applicant averred in his application Exh.87 that the applicant is falsely implicated in the crime. Section 328 of the I.P.C. is not applicable to the case of the applicant. Essential ingredients of charged sections are not prima facie established against the applicant. No any purchaser is traced out. During investigation, the investigating officer has illegally invoked Section 328 of the I.P.C. No such purchase of contraband is traced out to invoke Sections 18(a), 18(c), 27(b) (ii) of the Drugs and Cosmetics Act. The learned Special court did not consider all these aspects while framing of charge when there is prima facie, no material to proceed against the applicant.

4. Learned advocate for the applicant submitted that the applicant is falsely implicated in the crime. False report is registered against him. Section 328 of the I.P.C. is wrongly invoked against him. He pointed out the report as well as the statements of the witnesses. Learned advocate for the applicant is relying upon the following authorities:-

i) Mohd. Muslim @ Hussain vs. State (NCT of Delhi), decided on 28.3.2023 by the Hon'ble Supreme Court in Special Leave Petition (Cri.) No. 915 of 2023, in which in para 20 the Hon'ble Supreme court has observed as under:-

“20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused’s guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik¹⁹). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having 19 (2009) 2 SCC 624 regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.”

ii) Akash Satish Chandalia vs. the State of Maharashtra, decided by this court on 03.10.2023 in criminal bail application No. 1779 of 2023, in which in para 7 this Court has observed as under:-

“7. The seriousness of an offence and its heinous nature may be one aspect, which deserve a consideration while exercising the discretion to release an accused on bail, but at the same time, the factor of long incarceration of an accused as under-trial prisoner also deserve its due weightage. Pending the trial, a person cannot be kept in custody for an indefinite period of time and it clearly violate the fundamental right enshrined in the Constitution and time and again, has been considered to be a justifiable ground to exercise the discretion to release an accused.

Various orders/judgments from the highest Court are placed before me which have directed release of an accused on

the ground of long incarceration and the impossibility of conclusion of trial in a time bound manner.”

iii) Khushi Ram @ Happy vs. State of Punjab, decided on 3.10.2023, by the Punjab and Haryana High Court in CRM-M-12940 of 2021, in which the Punjab and Haryana High Court keeping in view the facts and law laid down by the Hon'ble Supreme court in the case of Dheeraj Kumar Shukla's case, the petitioner therein was ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial court/Duty Magistrate/Chief Judicial Magistrate, concerned subject to the eight conditions contained therein;

iv) Ganesh Pandurang Jadhao and another vs. The State of Maharashtra and others, decided on 15.10.2020 by this Court in criminal writ petition No. 1027 of 2015 and other connected matters, this Court in para 19 has observed asunder:-

“Considering these facts, we are unable to give any benefit to the petitioners/applicants in so far as the protection of Section 188 of the IP Code against them. In so far as the other offences, namely, Sections 272 and 273 of the IP Code is concerned, Sections 272 and 273 both the provisions referred to sale of prohibited articles. As stated above, there is positive material against the petitioners/applicants to show that the large quantity of prohibited articles were being transported from one place to another and statement in first information report on face of it constitutes offences under Sections 188, 272 and 273 of IP Code.”

v) Anand Ramchani Chaurasia and another vs. The State of Maharashtra and others, decided by this Court on

13.9.2019 in Criminal writ petition No. 3607 of 2019, in which this court held that the court do not intend to continue the prosecution against the petitioners therein as it would merely amount to an abuse of process of law and the prosecution of the petitioners under Sections 328 and 188 of the IPC, therefore, cannot continue.

vi) Judgment of Madhya Pradesh High Court in the case of Kamta Prasad @ K.P. Jaiswal s/o Shri Ramkhelawan Jaiswal vs. the State of Madhya Pradesh, decided on 26.9.2022 in Criminal revision No. 1803 of 2022, in which it is observed as follows:-

“While framing a charge, the Court is expected to apply its mind to the entire record and documents placed therewith before the Court. No meticulous examination of evidence is needed for considering whether the case would end in conviction or not. However, the Court is required to consider and apply its judicial mind, whether the allegations taken as a whole will, prima facie constitute an offence and if so, whether continuation of proceedings is an abuse of process of Court leading to injustice.”

vii) Hardeep Singh vs. Union Territory of J and K, in CM (M) No. 98 of 2021 c/w Bail Application No. 49 of 2021 decided on 13.8.2021 by the High Court of Jammu and Kashmir, in which it is observed that the learned trial court has wrongly framed the charges to the extent of section 25 and 29 of the Act, as such, the said petition is allowed and order impugned therein to the extent of framing of charge under sections 25 and 29 of the Act was quashed. The trial shall continue for the other offences for which the petition has been charged.

Nobody will dispute the ratio, guidelines and principles laid down in the above authorities. However, facts of each and every case are decisive. It is an admitted fact that the evidence of more than 10 witnesses have been recorded.

5. Learned A.P.P. for the respondent State pointed out the charge at Exh.37 in Special case No. 326 of 2022. The C.A. report is also filed.

6. Perused the charge sheet. No doubt, C.A. report is not a part of charge sheet but it can be filed later on in the court with permission. In the case in hand, the report shows that 93 tablets were found with this applicant. From the C.A. report it is established that sample complied with the requirement of Nitrosum-10 tablets, means it is contraband as prescribed in N.D.P.S. Act for which the applicant is charged. It is also submitted that from the evidence of witnesses prima facie case is not established against the applicant. But now charge is framed and to proceed against the applicant there is reasonable ground which can be inferred from the statements of witnesses as well as C.A. report which materially corroborates the prosecution's case. Therefore, ratio laid down in the above authorities though not disputed is not helpful to the applicant. Considering all these aspects, there is no substance in the grounds of objections raised in this application in view of the judgment of

Hardeep Singh (cited supra) which clarifies the object of N.D.P.S. Act.

7. Considering all these aspects, the application deserves to be rejected and it is rejected accordingly.

8. It is submitted that only five witnesses are remained. The applicant is behind bars since 18 months and therefore, trial be expedited. Thus, it would be proper to direct the trial court to conclude the trial as expeditiously as possible.

9. In view of the above, it is expected that the trial court shall conclude the trial as expeditiously as possible and in any case within six months. It shall be tried as sessions case. Needless to state that the word "session" means once it is started it shall not be stopped till it is finally concluded.

(SANJAY A. DESHMUKH, J.)

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