

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 426 OF 2024

Nilesh Sonaji Gawli

..Applicant

Versus

The State of Maharashtra

..Respondents

Mr. Abhishek S. Mishra a/w. Taukeer Siddiquee a/w. Devendra Singh for Applicant.

Mr. Avinash A. Naik, APP for State/Respondent.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 23 FEBRUARY 2024

P.C. :-

1. The Applicant is seeking anticipatory bail in connection with C.R.No.592 of 2023 registered at Varsova Police Station, Mumbai, on 1.11.2023, under Sections 22(B), 29 and 8(c) of the The Narcotic Drugs and Psychotropic Substances Act, 1985.

2. Heard Mr. Abhishek Mishra, learned counsel for the applicant and Mr. Avinash Naik, learned APP for the State.

3. The F.I.R. is lodged by one police constable Vishal Thorat. On 01.11.2023, around 1.50a.m. he was patrolling in the

jurisdiction of Varsova police station. They observed two persons moving in suspicious manner. The police officers got suspicious. They stopped both of them but they tried to run away. Therefore, the police immediately called two panchas and carried personal search of both the accused. The names of those accused were Usman Zakir Ali Shah and Tushar Ramesh Sonawane. The police officers called for the regular kit for N.D.P.S. cases. They followed the provision of Section 50 of the N.D.P.S. Act. The search of the accused was taken. The accused Usman was found carrying narcotic drug 'MD' (Mephedrone) weighing 2gm. and Tushar was carrying the same drug weighing 4gm. The samples were drawn and the contraband was seized. The accused were arrested. The police enquired with those accused as to from where the drug was procured. At that time, the police were informed that the drug was given by Firoz Shaikh and one Mouly. On this basis the F.I.R. was lodged.

4. Learned counsel for the applicant submitted that the applicant's name is not mentioned in the F.I.R. There is no connection of the applicant with the arrested accused. There is no

bank transaction or bank entry showing that the applicant has received any money from either of those two accused. There are no criminal antecedents against the applicant. He submitted that the applicant is arrested because the accused Tushar was on inimical terms with the present applicant and he deliberately named the applicant to falsely implicate him.

5. Learned APP opposed these submissions. He referred to the case diary and the statement of the arrested accused recorded during the investigation through which they could know the supplier of those drugs. He submitted that, in such cases the suppliers play an important role and, therefore, it is necessary to carry out thorough investigation by arresting the supplier. In this case the supplier was the present applicant.

6. I have considered these submissions and I have perused the investigation papers, as well as, the case diary. The investigation papers support the statement made in the F.I.R. The statements of the raiding party members are similar. The statement of the arrested accused Tushar specifically mentions that the

contraband was procured by him at the instance of one Firoz and it was actually taken from the present applicant. He has named the Applicant as Nilesh Gawli @ Mauli, resident of Amboli hills, Pratham Palace, S.R.A. Co-operative housing society Ltd., Andheri (W). The applicant had promised to give money after the contraband was sold by the arrested accused. The case diary entry dated 03.11.2023 mentions that the arrested accused Tushar had shown the applicant's house. Thus, there is no dispute about the identity of the present applicant. The offence is serious. The investigating agency has to trace the entire chain of the suppliers and sellers. The investigating agency will have to be given sufficient opportunity to interrogate the present applicant as there is definite material against him. In this view of the matter, the applicant cannot be protected U/s.438 of the Cr.p.c.

7. The application is rejected.

(SARANG V. KOTWAL, J.)