



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (ABA) NO.11 OF 2024

Ashik Vilas Kelzarwar ..vs.. State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.A. Dhawas, Advocate for the applicant.
Ms. Udeshi, Addl.PP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- FEBRUARY 1, 2024.

Heard.

2. By this application, the applicant is seeking anticipatory bail in respect of Crime No.536/2023 registered with Umred Police Station, Nagpur Rural for offences punishable Sections 20(b)(ii), 29 and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act).

3. The applicant is apprehending his arrest at the hands of the police as crime is registered on the basis of report lodged by the informant Pradip Chaware who is attached to the police station Umred District Nagpur, alleging that on secret information was received that two persons carrying ganja in a private bus proceeding towards the Umred. In pursuance of the said secret information he along with the raiding party members intercepted the bus. The Panchas were called by taking entry in the station diary, and thereafter, two persons were

taken into the custody namely Raunak Shimpi and Aaditya Waghmare aged about 22 years. Upon their personal search after following due procedure, Ganja was found in their possession, therefore, they were arrested. During the interrogation, name of the present applicant was revealed and therefore, the police is behind him to arrest and therefore, the applicant approached to this Court for grant of anticipatory bail.

4. Learned Counsel for the applicant submitted that except the statement of the co-accused there is no other material to connect the present applicant with the alleged offence. Now the investigation is completed and charge-sheet is filed against the other co-accused. His custodial interrogation is not required. Moreover, the confessional statement of the co-accused is not admissible against the present applicant in view of the observation of the Honourable Apex Court in the case of ***Tofan Singh vs. State of Tamil Nadu, (2021) 4 SCC 1*** and prays for releasing the applicant on bail.

5. The said application is strongly opposed by learned Additional Public Prosecutor on the ground that at this stage, the observation of the Honourable Apex Court in the case of ***Tofan Singh vs. State of Tamil Nadu*** (supra) are not helpful to the present applicant in view of the judgment of the Honourable Apex Court in ***The State of Haryana vs. Samarth Kumar, reported in 2022 LiveLaw (SC) 622***. She submitted that the custodial interrogation

of the present applicant is required to ascertain his connection with the other co-accused and his involvement in the present crime. In view of that, the application deserves to be rejected.

6. I have heard learned counsel for the parties. Perused the investigation papers. There is no dispute as to the fact that the involvement of the present applicant is revealed on the basis of the statement of the co-accused. Admittedly, the present applicant was not found in possession of the said contraband articles. His accusation is on the basis of the confessional statement of the co-accused.

7. Learned Counsel for the applicant placed reliance on the judgment of the Honourable Apex Court in Tofan Singh vs. State of Tamil Nadu (supra) wherein it is held that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. While considering this aspect the Honourable Apex Court in the case of The State of Haryana vs. Samarth Kumar (supra) observed that the respondent may be able to take advantage of the decision in the case of Tofan Singh vs. State of Tamil Nadu, perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial. To grant anticipatory bail in a case of this nature is not really warranted and the order passed by the High Court was set aside. In view of above observation made by the

Honourable Apex Court, in the present case also the applicant is implicated on the basis of confessional statement of the co-accused. The disclosure statement and the CDR which shows that the applicant was in continuous contact with the co-accused.

8. The Honourable Apex Court observed that this judgment in case of the Tofan Singh vs. State of Tamil Nadu is helpful to the respondent perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.

9. In the present case also from the possession of the co-accused 18.700 kilograms contraband article is seized. The CDR reports are collected by the Investigating Officer which shows the communication of the present applicant. As far as the confessional statement of the co-accused is concerned and the observation of the Honourable Apex Court, which may be helpful to the present applicant while considering his application under Section 439 of the Code of Criminal Procedure. In view of the observations of the Honourable Apex Court, there is no reason for this Court to take a different view. In view of the observation, the criminal bail application deserves to be rejected and the same is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)