



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

CRIMINAL APPLICATION (ABA) NO.151 OF 2024

(Syed Tanveer Alam 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.S. Mardikar, Sr. Advocate a/b Mr. C.A. Babrekar, Advocate for
the applicant.

Mr. N. Autkar, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- MARCH 11, 2024.

Heard.

2. By this application, the applicant is seeking pre-arrest bail. The applicant is apprehending arrest at the hands of police in connection with Crime No.658/2023 registered with Police Station Chandur Railway, District Amravati for the offence punishable under Sections 20(b)(ii) and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. As per the accusation that the police station Chandur Railway had received the information, and therefore, they have visited the house of the present applicant in his absence and was inquiring about him, therefore, he apprehended the arrest. As per the allegation, on 30/12/2023 the Chandur Railway police received the secret information that one Maruti Car bearing registration No.MH-27-H-5490 is standing on unattended near village Malkhed. On search of the said vehicle, the police found the contraband article Ganja in

the said car. It was about 5 kg. On the basis of same, the FIR is lodged against the unknown person. During investigation, it revealed that the vehicle is owned by Mohamma Abdul Haji Mohammad Yusuf.

4. As per the contention of the applicant he is having apprehension as police have visited his house. In fact, he is not at all concerned with the alleged offence. He is neither the owner of the said vehicle and he is not concerned with the contraband articles found in the vehicle. As far as custodial interrogation is concerned which is not required as there is no material to connect the present applicant with the alleged offence. The investigating agency on the basis of some statements attempting to implicate him in the alleged offence.

5. Learned Senior Counsel submitted that during investigation, the Investigating officer has recorded some statements and attempt is made to show that present applicant was intending to purchase the second hand vehicle and he has paid some amount towards that, and therefore, he is connected with the alleged offence. In fact, there is absolutely no material to show any connection of the present applicant. Considering the same, no prima facie case is made out and hence he be released on pre-arrest bail.

6. Learned Additional Public Prosecutor strongly opposed the application on the ground that during preliminary investigation it revealed that said Mohammad

Abdul Haji in whose name the vehicle is standing is the Chairman of Friends Education Society and there is a dispute between him and the present applicant on account of post of Chairman and Director. The statement of one Gulzar Khan Mehboob Khan is recorded, as per his statement the applicant had asked him to search for an old car for purchase. Accordingly, he suggested one Maruti Suzuki 800 belonging to one Javed to the applicant. The applicant paid him Rs.30,000/- which is to be paid to said Javed. The applicant asked him to hand over the car to one agent Sheikh Mushtaq. The applicant has gone to Sheikh Mushtaq but said Mushtaq had not transferred the said car. On inquiry to the insurance agent Mohammad Wasim Mohammad Mushtaq, it revealed that the applicant himself had remained present for transfer and insurance purchase and also paid requisite charges and given relevant documents. Accordingly, Mohammad Wasim Mohammad Mushtaq paid online fees and other formalities were done by the applicant personally. Thus, the connection of the present applicant revealed during the investigation. Considering the nature of the offence that the applicant is involved in a transportation of the contraband articles, his custodial interrogation is required and hence application deserves to be rejected.

7. I have heard learned Counsel for the parties. Perused the investigation papers. It reveals from the submission of the learned Additional Public Prosecutor that during investigation the statement of one Gulzar

Khan Mehboob Khan is recorded. I have perused the said statement which shows that one Javed Ali @ Sonu has communicated with him about selling of his car i.e. Maruti Suzuki 800 bearing No.MH-27-H-5490. He is also working as a driver with the present applicant. As per his statement, present applicant asked him to search second hand vehicle and also handed over Rs.30,000 to him and he has handed over the said amount to one Javed and one Mushtaq for transferring the said vehicle in the name of the present applicant.

8. The statement of Javed Ali is also recorded which only shows that one Gulzar has given him Rs.30,000 for delivery note of the said vehicle. After considering the said statement admittedly said vehicle was not transferred in the name of the present applicant. The statements also nowhere shows that the possession of the vehicle was handed over to the present applicant prior to its transfer on the RTO record. At the most, said statements only shows that present applicant approached to them for purchasing the second hand vehicle and they have shown the said vehicle to the present applicant and amount of Rs.30,000 is received towards the consideration amount. This Court is aware about the observation of the Hon'ble Apex Court in the case of *The State of Haryana Vs. Samarth Kumar [Criminal Appeal No.1005/2022]* wherein it is observed that the respondents may be able to take advantage of the decision in *Tofan Singh vs. State of Tamil Nadu [(2021) 4 SCC 1]* perhaps at the time of

arguing the regular bail application or at the time of final hearing after conclusion of the trial.

9. The case before the Hon'ble Apex Court wherein the allegation against the applicant was on the basis of statement of the co-accused. Here the fact shows that except the statement disclosing that present applicant was in search of second hand vehicle and the said vehicle was shown to him and the amount of Rs.30,000 towards consideration is paid by the present applicant. There is no other material to show that the present applicant was in possession of the said vehicle or it was transferred to the present applicant by its owner. Thus, mere statements are not sufficient to show the connection of the present applicant with the alleged offence, at this stage, no *prima facie* case is made out against the present applicant to connect him with the alleged offence on the basis of the statement recorded by the investigating agency. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) In the event of arrest, the applicant – Syed Tanveer Alam in connection with Crime No.658/2023 registered with Police Station Chandur Railway, District Amravati for the offence punishable under Sections 20(b)(ii) and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, be released on anticipatory bail on executing a

PR.Bond in the sum of Rs.50,000/- with one solvent surety, in the like amount.

(iii) The applicant shall attend the concerned police station as and when required for the investigation purpose and shall cooperate with the investigating agency. In case the Investigating Officer requires his presence before him he shall send notice in advance to the present applicant and present applicant shall attend the police station.

(iv) The applicant shall furnish his cell phone number and address with the address proof before the Investigating Officer and shall not leave the jurisdiction of Amravati district without prior permission of the Court.

(v) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

10. The application is disposed of.

11. The above observation is only for the purpose of the bail and the trial Court shall not be influenced by the said observation at the time of trial.

(URMILA JOSHI-PHALKE, J.)