



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

CRIMINAL APPLICATION (BA) NO.238 OF 2024
(Mohammad Sameer Rashid Ahemmad 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. S.V. Sirpurkar, Advocate for the applicant.
Mr. A.B. Badar, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- APRIL 25, 2024.

By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure. The applicant came to be arrested on 01/12/2023 in connection with Crime No.319/2023 registered with Police Station Padoli, Taluka and District Chandrapur for the offence punishable under Sections 8(c), 21(c), 27 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 4 and 25 of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act, 1951.

2. The accusation against the present applicant is on the basis of the statement of the co-accused namely Shahrukh Khan and Shaheel Israel Sheikh, both resident of Ghuggus, District Chandrapur. It is alleged that the LCB Chandrapur received secret information that the above two persons are travelling by car bearing No.MH-34-BR-5951 along with the MD drug powder and would be arriving at Padoli at around 10.00 p.m. It is also alleged that the informant took cognizance of the said report and

intercepted the said car. While intercepting the said car said Shahrukh Khan and Shaheel Israel Sheikh were found in the car on conducting the search of the said car. The MD powder of 93 grams and 105 grams was found in their possession worth of Rs.19,80,000/-. Accordingly, both accused were arrested.

3. As per the prosecution case, during investigation it revealed that the present applicant has agreed to purchase the said MD powder from the said co-accused persons. On the basis of the statement of the co-accused, present applicant is arraigned as an accused in the said crime.

4. Learned Counsel for the applicant submitted that except the bare statement of the co-accused there is no other material collected during the investigation to show that the present applicant agreed to purchase the said MD powder from the co-accused. He further submitted that even there is no material to show that there was any money transaction between the present applicant and the other co-accused. He invited my attention towards the observation of the Hon'ble Apex Court in the case of *Tofan Singh vs. The State of Tamil Nadu*, [(2021) 4 SCC 1] wherein it is observed that the confessional statement of the co-accused is not admissible and in view of that the applicant shall be released on bail. He further submitted that bare statement of the co-accused is not sufficient to show the involvement of the present applicant in the alleged offence. The applicant was

not found on the spot, nothing is recovered from him. Now, investigation is already completed, charge-sheet is filed. In view of that, he be released on bail.

5. Learned APP strongly opposed the said application on the ground that there was transaction between the present applicant and the other co-accused and present applicant has agreed to purchase the said MD powder. The offence alleged is serious in nature. The quantity seized is also huge in nature. There are criminal antecedents against the present applicant. In view of that, the application deserves to be rejected.

6. Heard learned Counsel for both the parties. Perused the investigation papers. After perusal of the investigation papers it reveals that the involvement of the present applicant is on the basis of the statement made by the co-accused. On perusal of the investigation papers, except the statement there is no other material collected by the investigating agency during the investigation.

7. Learned Counsel for the applicant rightly relied upon the decision of the Hon'ble Apex Court in the case of *Tofan Singh vs. The State of Tamil Nadu (supra)* wherein in paragraph No.59 observed that the marginal note to Section 67 indicates that it refers only to the power to "call for information etc.". It is further held that the said statement recorded under Section 67 of the said Act cannot be used as confessional statement against the co-accused. The Hon'ble Apex Court in the case of *State (By NCB) Bengaluru vs. Pallulabid Ahmad Arimutta and*

anr. [(2022) 12 SCC 633], also it has been held in clear terms in *Tofan Singh vs. The State of Tamil Nadu* (supra) that confessional statement recorded under Section 67 will remain inadmissible in the trial of an offence under the said Act. He submitted that in the light of the above observations, except the confessional statements, there is no other material to connect the present applicant with the alleged offence. There is no money transaction revealed during the investigation. As far as criminal antecedents is concerned, only one offence is registered against the present applicant and the trial is in progress. Moreover, it is well settled that merely because the criminal antecedents are there the liberty of the accused cannot be curtailed. Considering that there is no evidence against the present applicant to show his connection with the co-accused as there is no material to connect him with the alleged offence except the statement of the co-accused. Hence, the applicant has made out a case for grant of bail. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

- (i) The application is allowed.
- (ii) The applicant - Mohammad Sameer Rashid Ahemmad in connection with Crime No.319/2023 registered with Police Station Padoli, Taluka and District Chandrapur for the offence punishable under Sections 8(c), 21(c), 27 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and

Section 4 and 25 of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act, 1951, be released on bail on his executing a PR.Bond in the sum of Rs.50,000/- with one solvent surety of the like amount.

(iii) The applicant shall report the concerned police station once a month i.e. first Saturday of every month between 10:00 am and 1:00 pm.

(iv) 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.

(v) The applicant shall furnish his cell phone number(s) and address with the address proof. Additionally, he shall furnish names of his two relatives and their addresses with proofs.

8. Needless to mention that the observations made in this order are purely *prima facie* for deciding the present application for grant of bail only and learned Judge before whom the trial will be conducted shall not get influenced by the said observations.

9. The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)