



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

CRIMINAL APPLICATION (ABA) NO.220 OF 2024

(Sagar s/o Gunvantrao Khandekar 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. M.V. Rai, Advocate for the applicant.
Mr. U.R. Phasate, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- MAY 7, 2024.

Apprehending the arrest at the hands of police in connection with Crime No.173/2024 registered with Police Station Ramnagar, Wardha, District Wardha for the offence punishable under Sections 21(b), 29 and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, the applicant approached to this Court for grant of pre-arrest bail.

2. The accusation against the present applicant is on the basis of report lodged by the police officer on an allegation that on 06/03/2024 they got secret information that one Aishwarya Raut is possessing M.D. (Mephedron Drug) and in order to sell it, is coming to one Nagthana Chowk, Wardha near Chintamani Lawn and accordingly the police forwarded the said information to the superior police officer and proceeded towards the spot. After some time, said lady was intercepted and they disclosed their identity and the search of the bag was taken and from her M.D. Powder weighing 20 gms and 23 m.g. was recovered

from her. On the basis of said report, police have registered the crime against the co-accused. During her statement, she disclosed that she has obtained said powder from the present applicant. Accordingly, on the basis of her statement, the applicant is arraigned as an accused.

3. Learned Counsel for the applicant submitted that as far as the role of the present applicant is concerned which revealed on the basis of the statement of the co-accused which is not admissible. He submitted that at the most the case against the present applicant though attributable is of the abetment as nothing is recovered from the present applicant. He submitted that custodial interrogation of the present applicant is not required on the basis of the statement of the co-accused in the light of the decision of the Hon'ble Apex Court in ***Tofan Singh v/s State of Tamil Nadu, [(2021) 4 SCC 1]*** is not admissible, and therefore, the applicant be protected by granting ad-interim protection.

4. Learned Additional Public Prosecutor strongly opposed the application on the ground that at the stage of anticipatory bail, the decision of *Tofan Singh v/s State of Tamil Nadu (supra)* would not help the present applicant. In support of his contention, he placed reliance on ***The State of Haryana Vs. Samarth Kumar [2022 Livelaw (SC) 622]***.

5. On perusal of the investigation papers it reveals that on secret information the co-accused was intercepted and from her the M.D. Powder was recovered.

Her statement was recorded and on the basis of her statement the present applicant was arraigned as an accused. As far as the observation of the Hon'ble Apex Court in the case of *The State of Haryana Vs. Samarth Kumar (supra)* it is held that the respondents may be able to take advantage of the decision in *Tofan Singh vs. State of Tamil Nadu (supra)* 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.

6. In the present case also the applicant is arraigned as an accused on the basis of the statement of the co-accused. Admittedly, the statement of the co-accused is not admissible in evidence in view of the decision of the Hon'ble Apex Court in the case of *Tofan Singh vs. State of Tamil Nadu (supra)* but as observed by the Hon'ble Apex Court in the case of *The State of Haryana Vs. Samarth Kumar (supra)* that the respondents i.e. the accused may be able to take advantage of the decision at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial. At this stage, sufficient material is on record to show the involvement of the present applicant. In view of that, the application deserves to be rejected.

7. Hence, the application is accordingly rejected.

(URMILA JOSHI-PHALKE, J.)