



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 412 OF 2024

Sheikh Zibrial @ Pinki s/o Sheikh Rajjak
Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Pardi,
Nagpur City, Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. K. Bhangde, Advocate for applicant.
Mr. N. B. Jawade, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 30/07/2024

1. The applicant came to be arrested on 29.12.2023 in connection with Crime No.470/2023 registered with Police Station, Pardi, Nagpur City, District Nagpur for the offences punishable under Sections 8(c), 20(b)(ii)(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act').

2. The accusation against the present applicant is on the basis of the confessional statement of the co-accused. On 26.08.2023 the informant Head Constable Vijay Yadav received a secrete information that the co-accused namely Sheikh Shahrukh Sheikh Khalil and Gaurav Nimchand Raut are travelling from open ground, Mankar Wadi, Bhavani Nagar, Pardi, Nagpur. They were transporting Ganja in truck bearing No. MH-20-EG-6068. Perusal

to the said information, the informant along with the raiding team conducted the raid. The alleged truck was intercepted and the search was carried out after following the due process of law.

3. The raiding team noticed 1 to 7 bags containing Ganja. All seven bags were measured and it was carrying 87.110 Kg contraband articles. Police also seized Cell Phone from the possession of Sheikh Shahrukh s/o Sheikh Kalim and as well as from the co-accused Gaurav s/o Nimchand Raut. The co-accused disclosed the name of the present applicant as well as the co-accused Monu Bisen who is absconding. The said Monu Bisen was having Cell phone number as 8208034864. The co-accused also disclosed the Cell phone number of one unknown person. Thus, during the investigation, the name of the present applicant was revealed to the Investigating Officer and therefore, the investigating agency has arrested the present applicant.

4. Heard learned Counsel for the applicant. He submitted that except the statement of the co-accused, there is no other material to connect the present applicant with the alleged offence. He submitted that applicant was not present on the spot. In other words, at the time of seizure, he was not present subsequently also nothing was seized from him. Merely, on the basis of the confessional statement of the co-accused which is not admissible

in view of the decision of the Hon'ble Apex Court in the case of **Tofan Singh Vs. The State of Tamil Naidu** reported in **(2021) 4 SCC 1**, the prosecution relied upon. He submitted that now the investigation is already completed and charge-sheet is filed, further incarceration of the present applicant is not required.

5. In support of his contention he placed reliance on the order of this Court in **Criminal Application (BA) No.356/2024 along with 366/2024 dated 04.07.2024, Criminal Application (BA) No.238/2024 (Mohammad Sameer Rashid Ahemmad Vs. State of Maharashtra) decided on 25.04.2024, Prabhakar Tewari Vs. State of Uttar Pradesh and another** reported in **(2020) 11 SCC 648, Jetha Bhaya Odedara Vs. Ganga Maldebhai Odedara and another** reported in **(2012) 2 SCC 150, Maulana Mohammad Amir Rashadi Vs. State of Uttar Pradesh and another** reported in **(2012) 2 SCC 382, Bharat Chaudhary Vs. Union of India** reported in **(2021) 20 SCC 50, State (By NCB) Bengaluru Vs Pallulabid Ahmad Arimutta and another** reported in **(2022) 12 SCC 633**. On the basis of submissions, he submitted that the considerations for grant of bail which needs to be considered are that, whether there is a *prima facie* case is made out against the applicant, the gravity of the offence and the punishment provided for the said

offence. He submitted that criminal antecedents against the accused is not the relevant factor. Merely because, there are criminal antecedents is not sufficient to deny the bail to the applicant and prays for releasing the applicant on bail.

6. Learned APP strongly opposed the said application on the ground that besides the statement of the co-accused, during the investigation, the Investigation Officer has collected the CDR and SDR reports. He submitted that as per the communication by the investigating agency, the Cell phone number of the present applicant is 9146969754 and the Cell number of the co-accused Monu Bisen is 8208034864. There are several calls between the present applicant and said Monu Bisen from 20.07.2023 till 26.08.2023. There are calls between the present applicant and the co-accused Sheikh Shahrukh Sheikh whose Cell number is 9529393633 as well as there are calls between the present applicant and other co-accused Gaurav Raut. He submitted that there were calls between the absconding accused Monu Bisen and the person from Orissa whose Cell number was also revealed during the investigation. Thus, he submitted that the consistent calls between the present applicant and other co-accused establish the link between him and the other applicants. He also invited my attention towards the rigor under Section 37 and submitted that there are various criminal offences registered

against the present applicant, in all 52 offences are registered against the present applicant out of which 8 offences are registered under the NDPS Act.

7. In view of Section 37(1)(b)(ii) of NDPS Act, he submitted that in view of the rigor where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail then and then only the Court can use the discretion in favour of the present applicant, in view of that, the application deserves to be rejected. Thus, he submitted that there is a *prima facie* material against the present applicant and on the basis of investigation carried out by the investigating agency and the conduct of the present applicant it cannot be said that the applicant would not commit any offence when he is on bail. At this stage, there are reasonable grounds to hold that the applicant is guilty of the said offence and therefore, in view of the rigor under Section 37 of the NDPS Act, the application deserves to be rejected.

8. After hearing the learned Counsel for the applicant and learned APP for the State, perused the entire investigation papers. It is not disputed that the applicant was not found at the spot when raid was conducted. The involvement of the present applicant revealed from the statement of the

co-accused. During the investigation, the Investigating Officer has collected the information regarding the Cell phone numbers of the present applicant as well as co-accused. The CDR and SDR reports are collected. From the CDR and SDR reports it reveals that there are in all four calls between the present applicant and co-accused Monu Bisen. Thereafter, said Monu Bisen and the accused No.1 who is arrested are having 14 calls between them. The accused No.2 and the Monu Bisen there are 18 calls between them. There are calls between Monu Bisen and the person from Orissa whose involvement is revealed. There are calls between the present applicant and the person from the Orissa. Thus, there is sufficient material to show that there are consistent calls between all the accused. As far as the *prima facie* case is concerned, it reveals from the investigation papers that prior to the raid, there were consistent calls between the present applicant as well as the other co-accused who is absconding. Thus, *prima facie* involvement of the present applicant reveals from the investigation papers.

9. The learned Counsel for the applicant placed reliance on the decision of the Hon'ble Apex Court in **Prabhakar Tewari Vs. State of Uttar Pradesh** (referred supra) wherein the considerations considered by the Hon'ble Apex Court that the offence alleged no doubt is grave and serious and there are several criminal cases pending against the

accused. These factors by themselves cannot be the basis for refusal of prayer for bail and released the applicant on bail. In the said case, the crime was registered against the concerned accused under the provisions of the Indian Penal Code.

10. In **Jetha Bhaya Odedara Vs. Ganga Maldebhai Odedara** (cited supra) the considerations for grant of bail are considered by the Apex Court.

11. In the case of **Maulana Mohammed Amir Rashadi** (cited Supra) wherein also the consideration for grant of bail and the role of the accused was considered and it is held that the relevant consideration in this case are the accused has been jail since 24.08.2009, the trial has commenced by examining the two prosecution witnesses and the assurance by the State that trial will not be prolonged and conclude within a reasonable time and the High Court while granting bail has imposed several conditions for strict adherence during the period of bail and in view of that considered the bail application by observing that criminal antecedents, the claim of the second respondent cannot be rejected. It is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court.

12. There is no dispute as to the fact that in view of the decision of the Hon'ble Apex Court in case of **Tofan Singh Vs. State of Tamil Naidu** (supra) wherein in paragraph No.59 observed that the marginal note to the section 67 of the NDPS Act 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.

13. The Hon'ble Apex Court in the case of **State (BY NCB) Bengaluru** (supra) wherein also it has been held in clear terms that in **Tofan Singh Vs. State of Tamil Naidu** that the confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act.

14. But in the present case, besides the confessional statement, there is other material collected during the investigation which shows that there were consistent calls between the present applicant and the other co-accused. There are in all 52 offences registered against the present applicant and out of that 8 offences are registered under the NDPS Act.

15. At this stage, when the Court is concerned with question of granting or refusing the bail, the

same cannot be the sole consideration. However, consideration should be viewed in the light of rigor of Section 37 of the NDPS Act. In view of Section 37 of the NDPS Act, bail can be granted if Court is satisfied that applicant is not likely to commit offence while on bail and the bail can be granted if the Court is satisfied that there are reasonable grounds for believing that applicant is not guilty of offence.

16. Thus, satisfaction contemplated regarding accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than *prima facie* grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. Thus, recording of satisfaction on these aspect is *sine quo non* for grant of bail.

17. In the light of the above well settled legal position, there is a sufficient material on record to hold that the applicant is involved in the crime as well as in view of Section 37 (1)(b)(ii) there is reasonable ground to hold that the applicant has committed the offence when he was released on bail in other offences. Thus, in view of the rigor under Section 37 of the NDPS Act, I do not find any merits

in the application to release the applicant on bail and there are reasons to believe that the applicant is guilty of the said offence.

18. In view of this matter, the application deserves to be rejected and the same is **rejected**.

19. The trial Court shall not be influenced by the observations made while releasing the applicant on bail.

(URMILA JOSHI-PHALKE, J.)