



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

CRIMINAL APPLICATION (BA) NO. 405 OF 2024

Avesh Kureshi s/o Shabbir Kureshi V/s 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. R.M.Daga, counsel for the applicant.

Mr. A.B.Badar, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 06/05/2024.

1. The applicant came to be arrested on 09/11/2024, in connection with Crime No.30/2024 registered with Police Station Chandrapur (City) for the offence punishable under sections 8(c), 21(b),29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act').

2. As per the accusation on 09/1/2024, the Police Officer attached to the Police Station, Chandrapur City received a secrete information that one Soheli Shaikh is in possession of brown sugar and was selling it illegally. After necessary formalities, the raid was conducted and said Soheli Shaikh was apprehended near Hanuman Temple. During his personal search, 7.12 grams of Brown Sugar was recovered from his pant packet. On inquiry, the said Soheli Shekh disclosed that he procured seized contraband from the present applicant. On the basis of the said, applicant is arraigned as an accused.

3. Learned counsel for the applicant submitted that as far as the implication of the present applicant is concerned, which is on the basis of confessional statement of the co-accused which is not admissible. In the light of the decision of the Hon'ble Apex Court in the case of ***Tofan Singh vs The State Of Tamil Nadu reported 2013 AIR SCW 5740*** . He further submitted that quantity which is seized from the possession of the present applicant is intermediate quantity, and therefore, rigor under Section 37 is also not applicable.

4. In support of his contention, he placed reliance in the case of ***Sami Ullaha Vs Superintendent, Narcotic Central, Bureau reported in (2008) 16 SCC 471*** wherein, it is held that the quantity, thus, alleged to have been recovered from the co-accused persons could be said to be an intermediate quantity and, thus, the rigor of the provisions of Section 37 of the Act relating to grant of bail may not be justified.

5. He further placed reliance on the decision of this Court in Criminal Application (BA) No. 420/2021 decided on 10/06/2021, and the recent order passed by the Hon'ble Apex Court in Special Leave to Appeal (Cril.) No. 2740/2023 decided on 16/05/2023 wherein also, the Hon'ble Apex Court has released the applicant on bail, being it is intermediate quantity.

6. Learned APP strongly opposed the said application on the ground that the statements of witnesses shows involvement of the present applicant with the alleged offence. The confessional statement of the co-accused sufficiently

shows the involvement of the present applicant, considering there are criminal antecedents against the present applicant, the bail application deserves to be rejected.

7. Having heard learned counsel for the applicant and learned APP for the State, perused the investigation papers. Un-disputatly, the implementation of the present application is on the basis of the statement of the co-accused. The recitals of the report itself shows that, on inquiry with the co-accused, he disclosed that said contraband is purchased by him from the present applicant. Except the said confessional statement, there is no other material to connect the present applicant. As observed by the Hon'ble Apex Court that, confessional statement of the co-accused is not admissible against the applicant. It is true that applicant is facing the other prosecution, and it is under the provision of the NDPS Act but, considering the fact that, in the present crime, his involvement is on the basis of the statement of the co-accused, and the quantity alleged to have been recovered from the co-accused persons could be said to to be an intermediate quantity and therefore, the rigor of the provision of Section 37 of the NDPS Act relating to grant of bail, is not attracted. In view of that, application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order:

- a) The criminal application is **allowed**.
- b) The applicant **-Aversh Kureshi s/o Shabbir Kurershi**, shall be released on bail, in connection with Crime No.30/2024 registered with Police

Station Chandrapur (City) for the offence punishable under sections 8(c), 21(b), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on executing P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

- c) The applicant shall not indulge any similar types of criminal activity while on bail.
- d) The applicant shall attend the proceeding before the trial Court without seeking any exemption unless there are exceptional circumstances.
- e) The applicant shall surrender his passport, if any, before the investigating agency.
- f) The applicant shall attend the concerned Police Station once in a month on 1st of every month between 10.00 a.m. to 01.00 p.m. till culmination of the trial.
- g) The applicant shall not make any attempt or tamper with the prosecution evidence directly or indirectly.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]