



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

CRIMINAL APPLICATION (ABA) NO.550 OF 2024

Lakhan Vedmani Dubey

Vs.

State of Maharashtra, Through Police Station Officer, Tahsil Nagpur

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

Court's or Judge's orders

Mr. Prabhakaran Panneerselram, Counsel with Ms. P. V. Dubey, Counsel for
the applicant.

Mr. C. A. Lokhande, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 27/08/2024

1. Apprehending the arrest at the hands of police in connection with Crime No.187/2024 registered with Police Station, Tahsil Nagpur for the offences punishable under Sections 22(c) and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act'), the applicant approached this Court for grant of pre-arrest bail.

2. The crime is registered on the basis of report lodged by Police Head Constable Sanjay Ramlal Shahu on an allegation that they received a secret information that one person by name Vimal Kumar is transporting the Mephedrone drugs power and selling it. Immediately, they have called two panchas and in presence of these panchas, the co-accused was intercepted and from his possession,

72 grams of Mephedrone drug was seized. The samples were collected by the raiding party members by following the mandatory provisions. The notice under Section 50(1) of the NDPS Act is also given to the co-accused and the samples were forwarded for the inventory. After following the due process, the FIR was lodged against the co-accused.

3. During the investigation, the statement of the co-accused was recorded and on the basis of the said statement, the name of the present applicant and his involvement is revealed.

4. Heard learned Counsel for the applicant who submitted that the involvement of the present applicant is on the basis of statement of the co-accused. There is absolutely no material collected by the investigating agency to show that the present applicant was involved in the alleged offence. In fact, the applicant was arrested by the Pardi Police Station from the said place, he was brought to the Police Station, however he was not arrested. It is submitted by the learned Counsel that except the statement of the co-accused, there is no material, in view of that the present applicant be protected by granting anticipatory bail.

5. Learned APP strongly opposed the said application and submitted that on the basis of the investigation and the interrogation with the

co-accused, the involvement of the present applicant is revealed. As far as the anticipatory bail is concerned, his custodial interrogation is required and therefore, the application deserves to be rejected.

6. After hearing the learned Counsel for the applicant and learned APP for the State, perused the investigation papers, from which it reveals that from the possession of the co-accused 72 grams of Mephedrone drug was seized. He was interrogated and during the interrogation, his statement was recorded. It revealed from the statement that he has procured the said drugs from the present applicant and the other co-accused namely one Danish. On the basis of the statement of the said co-accused, the involvement of the present applicant revealed and therefore, he was shown as a co-accused in the said crime. Admittedly, in view of the judgment of the Hon'ble Apex Court in the case of **Tofan Singh vs. State of Tamil Nadu** reported in **(2021) 4 SCC 1**, the statement of the co-accused is not admissible against the present applicant but as far as the anticipatory bail is concerned, it is observed by the Hon'ble Apex Court in the case of **The State of Haryana Vs. Samarth Kumar reported in 2022 LiveLaw (SC) 622** that in cases of this nature, the respondents may be able to take advantage of the decision in **Tofan Singh v. 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 and the anticipatory bail granted to the accused was cancelled by the Hon'ble Apex Court.

7. In view of the observations of the Hon'ble Apex Court, here in the present case also the involvement of the present applicant is on the basis of the statement of the co-accused. As far as the assistance of the decision of **Tofan Singh vs. State of Tamil Nadu** (supra) is concerned, which in view of the judgment of the Hon'ble Apex Court can be taken as an assistance at the time of arguing the regular bail application or at the time of the final hearing after conclusion of the trial. As far as grant of anticipatory bail is concerned, it cannot be used the discretion in favour of the present applicant, in view of that, the application deserves to be rejected. Accordingly, the application is rejected.

(URMILA JOSHI-PHALKE, J.)