



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

CRIMINAL APPLICATION (BA) NO. 752 OF 2024

Balkrushna s/o Bhaurao Tople

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Pinjar
District Akola

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

Court's or Judge's orders

Mr. R. M. Tahaliyani, Counsel for applicant.
Mr. S. S. Hulke, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 24/09/2024

1. The applicant came to be arrested on 14.04.2024 in connection with Crime No.112/2024 registered with Police Station, Pinjar, District Akola for the offences punishable under Sections 8(c), 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "the NDPS Act").

2. The crime is registered on the basis of report lodged by Police Head Constable Namdeo Mahadev More on an allegation that on 30.03.2024 he has received an information from the Police Patil to the effect that a plastic bag emitting strong sour smell is found near the pond. He informed that he has obtained the written permission from his superior and directed the Police Head Constable to reach the spot thereafter, in presence of the panchas, he seized the said packet and the involvement of two

co-accused namely Santosh Gajanan Kamble and Digambar Maroti Zinge was revealed. They are taken into custody. After following due process, the samples were obtained in presence of panchas. During investigation, it revealed to the Investigating Officer that the co-accused have sold 5 Kg. 500 grams contraband articles to the present applicant and therefore, he was arraigned as an accused.

3. Learned Counsel for the applicant submitted that even accepting the allegation as it is, it is intermediate quantity and not a commercial quantity therefore, the rigour under Section 37 of the NDPS Act will not attract. He submitted there are no criminal antecedents against the present applicant. On the contrary, the co-accused to whom he was acquainted with and handed over one packet to him on the pretext that he will collect subsequently and therefore that packet was found in the house of the present applicant. The said packet is not seized from the conscious possession of the present applicant. Now the investigation is already completed, Charge-sheet is yet to be filed, further incarceration of the present applicant is not required. In view of that the application deserves to be allowed.

4. Learned APP strongly opposed the said application and submitted that the commercial quantity was found along with the other-accused out of which 5 Kg 500 grams was purchased by the

present applicant. The mandatory provisions are already followed by the investigating agency. The investigation is still in progress. In view of that the application deserves to be rejected.

5. After hearing the learned Counsel for the applicant and learned APP for the State, perused the entire investigation papers. Admittedly, the name of the present applicant is not mentioned in the FIR. During investigation it is revealed that present applicant has purchased 5 Kg 500 grams contraband articles from the co-accused. Admittedly, the quantity which is seized from the possession of the present applicant is intermediate quantity and not commercial quantity, therefore regour Section 37 of the NDPS Act is not attract. On perusal of the investigation papers, it reveals that the investigation is practically complected though charge-sheet is not filed. There are no criminal antecedents. Considering all these aspects, the application deserves to be allowed by imposing certain condition. Accordingly, I proceed to following order:

ORDER

(i) The application is allowed.

(ii) The applicant **Balkrushna s/o Bhaurao Tople** shall be released on bail in connection with Crime No.112/2024 registered with Police Station, Pinjar, District Akola for the offences punishable under Sections 8(c), 20(b)(ii) of the Narcotic Drugs and Psychotropic

Substances Act, on executing PR Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the proceeding before the Special Court without seeking any exemption unless there are exceptional circumstances.

(iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(v) The applicant shall not indulge himself in similar type of the activities.

(vi) On contravention of any condition imposed, the bail granted to the applicant deserves to be cancelled.

6. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)