



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

CRIMINAL APPLICATION (ABA) NO. 662 OF 2024

Syed Akbar Pasha Vs The 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. S.M. Lodha, counsel for the applicant.

Ms. T.H. Udeshi, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 04/10/2024.

1. Apprehending the arrest at the hands of police in connection with Crime No. 647/2024 registered with Police Station Pandharkawada, District Yavatmal for the offence punishable under Sections 20(b), 29 and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as the 'NDPS' Act), present applicant approached this court for pre-arrest bail.

2. The crime is registered on the basis of a report lodged by Devendra Devidas Meskar on an allegation that he received secret information through the Local Crime Branch, Yavatmal, in respect of a person carrying Ganja near Runza Petrol Pump on Yavatmal Road. He, along with other raiding party members and one person, went to the spot with panch witnesses and found one person along with 8 kg of Ganja. Accordingly, in the presence of the panchas mandatory provisions was followed and person was arrested, and on the basis of the report filed by him, the crime is registered against the co-accused. During the inquiry with the said

co-accused, the name of the present applicant is revealed, and therefore, the applicant is apprehending the arrest at the hands of police.

3. Heard learned counsel for the applicant, who submitted that, as far as the involvement of the present applicant is concerned, absolutely there is no material except the statement of the co-accused to show his involvement in the alleged offence. He submitted that, though prosecution relied upon the CCTV footage or the CDR reports, that material is not sufficient to connect the present applicant with the alleged offence. He submitted that in the CCTV footage panchanama, nowhere refers the present applicant. He submitted that the statement of the co-accused is also not sufficient to show the involvement of the present applicant in the alleged offence. There is absolutely no material to show that the co-accused has procured the said contraband articles from the present applicant. Thus, considering the investigation papers, nowhere reveals any role to the present applicant. In view of that, the present applicant be released on anticipatory bail.

4. In support of his contention, he placed reliance on the order passed by this Court in ***Criminal Application (ABA) No. 454/2024 (Mahalaxmi s/o Nagaraju Cheluboyina vs State of Maharashtra, decided on 08/08/2024)***.

5. Per contra, learned APP strongly opposed the said application and submitted that on the basis of the registration of the crime No. 647/2024, the wheels of the

investigation started rotating, and one of the co-accused persons, namely Alim Khan Salim Khan, was arrested and co-accused, Sheikh Sarfaraj @ Pinku Seth Sheikh Saharif, as well as the applicants involvement, was revealed. She submitted that the co-accused Alim Khan Salim Khan gave a statement that the present applicant has given the contraband to him, and therefore, he was found in possession of the said contraband articles. In view of that, a prima facie case is made out against the present applicant, and therefore, the application deserves to be rejected.

6. She placed reliance on the decision of the Hon'ble Apex Court in the case of *State of Haryana Vs Samarth Kumar in Criminal Appeal No. 1005/2022 (arising out of Special Leave Petition (Crl.) No. 6575/2021) dated 20/07/2022; and Anarul Sk. Vs the State of West Bengal in Special Leave to Appeal (Crl.) No(s). 12621/2024 dated 19/09/2024*, wherein the anticipatory bail application in the NDPS cases was rejected.

7. After hearing learned counsel for the applicant and learned APP for the State. Perused the investigation papers, from which it reveals that the vehicle of the accused was intercepted by the informant on the basis of the secret information received by him, and therefore, by following the due procedure, he was arrested. The samples were obtained in presence of the panchas, and during investigation, the co-accused made a statement, and in view of the statement, the involvement of the present applicant is revealed. From

the said statement, it revealed that the co-accused has procured the said contraband articles from the present applicant. The CCTV footage is also collected, and the statement of one Raju Vitthalrao Mutaylwar was recorded to that extent. He stated before the investigating officer that one person was seen in the CCTV footage driving the motorcycle, and the applicant, who was arrested, has identified him as an Akbar Talwar, who is the present applicant. The CDR reports were also collected, which shows that there were continuous calls between the present applicant and the other co-accused. Thus, the involvement of the present applicant is revealed from the investigation papers.

8. As far as the decision on which the learned counsel for the applicant placed reliance, wherein this Court has released the applicant on anticipatory bail, is concerned, the facts of that case shows that except the allegation in the charge-sheet, no other material was collected by the investigating agency to show the communication or connection between the applicant therein and the other co-accused, and therefore, the anticipatory bail was considered and released on bail.

9. Moreover, as far as the present applicant is concerned, the statement of the co-accused, the CDR reports and the CCTV footage, which shows the involvement of the present applicant, at this stage. As far as the statement of the co-accused is concerned, admittedly, in view of the decision

of the *Tofan Singh vs State of Tamil Nadu [(2021) 4 SCC 1]*, wherein it is held that the statement of the co-accused is not admissible. The Hon'ble Apex Court has considered this aspect in the case of *State of Haryana vs Samarth Kumar [2022 SCC OnLine SC 2087]*, wherein the Hon'ble Apex Court held that the respondents may be able to take advantage of the decision in the *Tufan Singh (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 merely warranted and cancels the bail which was granted to the applicant therein.

10. Thus, considering the observations of the Hon'ble Apex Court in the case of *State of Haryana Vs Samarth Kumar* referred (supra) and *Anarul Sk. Vs the State of West Bengal* referred (supra), the application of the applicant for grant of anticipatory bail deserves to be rejected. Accordingly, I proceed to pass the following order;

The criminal application is **rejected**.

[URMILA JOSHI-PHALKE, J.]