



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

CRIMINAL APPLICATION (BA) NO.1109 OF 2024

Maksud Ahmad Aminuddin

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Nandanvan, Nagpur

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. Daga, Counsel for the applicant.
Mr. N. B. Jawade, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 13/12/2024

1. The applicant came to be arrested on 31.08.2024 in connection with Crime No.355/2024 registered with Police Station, Nandanvan, District Nagpur for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act').

2. The crime is registered on the basis of the complaint filed by the Police Inspector Gajanan Gulhane of the Anti Narcotic Cell, Crime Branch, Nagpur on an allegation that he has received secret information about two persons namely Kapil Khobragade and Rakesh Giri coming near the Hiwari Nagar Garden at about 8.00 a.m. for sale of MD (Mephedrone), after completing all the formalities as

contemplated under Section 41, 42 (1)(2) of the NDPS Act and after calling the independent panchas and the electronic weight measurer photograph, the raiding party rushed towards the spot. At about 10.30 a.m. two persons came near the spot and they were intercepted. From the possession of the said persons 318 grams of MD worth Rs.31,80,000/- was found from one Kapil Khobragade and 538 grams of MD worth Rs.53,80,000/- was found from Rakesh Anantrao Giri and 51 grams of MD worth Rs.5,10,000/- was found from co-accused Akshay Wanjari. Thus, total 907 grams of MD worth Rs.90,70,000/- was seized from all the accused. Upon inquiry, it revealed that they have brought the said contraband from the present applicant. On the basis of the statement of the co-accused, the present applicant is arraigned as an accused.

3. Heard learned Counsel for the applicant who submitted that the implication of the present applicant is on the basis of the statement of the co-accused. Except the statement of the co-accused, there is no other material collected by the investigating agency to show any connection between the present applicant and other co-accused. He submitted that the statement of the co-accused recorded under Section 67 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** and **State (By NCB)**

Bengaluru Vs Pallulabid Ahmad Arimutta and another reported in **(2022) 12 SCC 633**. In view of that the rigour under Section 37 of the NDPS Act is not attracted and prayed for granting of bail.

4. In support of his contention he placed reliance on **Abdul Mohammed Shaikh @ Abdul Thane Vs. Union of India and anr.** reported in **2021 (1) DC (Narcotics) 876, Nasruddin Ali Mohd. Ali @ Nasir Chatai @ Nasir Kalia Vs. The State of Maharashtra** reported in 2023 NCBHC-AS 35665 and **Criminal Bail Application No.1219/2023 [Shaikh Aslam Shaikh Ismaile alias Aslambaba Ganjawala Vs. The State of Maharashtra & Anr]** decided on **20.03.2024** and **Imran Aslam Divkar Vs. Union of India and another** reported in **2024 NCBHC-AS 41933**.

5. Per contra, learned APP strongly opposed the said application and submitted that the statements of the witnesses and the statements of the co-accused shows the involvement of the present applicant in the alleged offence. The huge contraband article was seized from the co-accused which was procured by them from the present applicant. In support of his contention he placed reliance on the **Narcotic Control Bureau Vs. Mohit Aggarwal** reported in **2022 All SCR (Cri) 1452** and submitted that in view of rigour under Section 37 of the NDPS Act, the application deserves to be rejected. He

further placed reliance on the order of this Court in **Criminal Application (BA) No.412 of 2024 [Sheikh Zibrial @ Pinki s/o Sheikh Rajjak Vs. State of Maharashtra] decided on 30.07.2024** wherein also in view of rigour under Section 37, this Court has rejected the bail application.

6. After hearing both the sides and on perusal of the investigation papers, it reveals that besides the statements of the co-accused, the prosecution placed reliance on the statement of Washim Shaikh Rustum Shaikh and Statement of Kayamuddin @ Kayam Siddique. As far as the statement of Washim is concerned, which is hearsay statement, as he has received the information that the present applicant is involved in supplying the MD drugs to the other persons. Learned APP also invited my attention towards the chart of the crimes registered against the present applicant which shows that in all 15 offences registered against him of a similar nature and submitted that considering the criminal antecedents, the application deserves to be rejected.

7. Learned Counsel for the applicant submitted that mere registration of the offence is not sufficient to reject the prayer of the bail of the present applicant. He submitted that this aspect is considered by this Court at Principal Seat and it is observed that mere antecedents under the NDPS Act are not sufficient to curtail the liberty of the applicant

and release him on bail. He submitted that similarly none of the offence is proved against the present applicant, and merely on suspicion these offences are registered against him. As far as the rigour under Section 37 is concerned, which is not attracted as there is no contraband articles are seized from the present applicant and therefore, there is a reason to believe that he is not involved in the said offence, in view of that also the application deserves to be allowed.

8. On hearing the submissions of both the sides and on perusal of the investigation papers, there is no dispute as to the fact that the huge contraband was seized from the co-accused and as per their statements, the same was procured from the present applicant. As far as the involvement of the present applicant and the procurement by them from the present applicant is concerned, except the statement of the co-accused there is no other material to show that there was any connection between the present applicant and the other co-accused. There is no CDR report or SDR report to show their association with each other.

9. The Hon'ble Apex Court in the case of **Tofan Singh Vs. State of Tamil Naidu** (supra) 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.

10. The Hon'ble Apex Court in the case of **State (BY NCB) Bengaluru** (supra) by referring the decision of **Tofan Singh Vs. State of Tamil Naidu** held that the confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the said Act. He submitted that in the light of the above observation itself the confessional statement there is no other material to connect the present applicant with the alleged offence. Admittedly, except the confessional statement, there is no other material to show that the co-accused have procured the same from the present applicant. There is consistent view as far as the involvement on the basis of the statement is concerned. Though learned APP placed reliance on the decision of this Court in **Sheikh Zibrial @ Pinki s/o Sheikh Rajjak Vs. State of Maharashtra** (supra) but the facts on record shows that there was some material to show the connection between the accused arrested and the accused who was seeking bail. There were CDR and SDR reports to show their connection and therefore, by considering the rigour under Section 37 of the NDPS Act, the application was rejected.

11. He also placed reliance on the decision of the Hon'ble Apex Court in the case of **Narcotic Control Bureau Vs. Mohit Aggarwal** wherein the expression reasonable grounds used in clause (b) of Sub-section (1) of Section 37 was considered and it is held that it would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. Said satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail. The assumption that since nothing was found from the possession of the respondent, he is not guilty of the offence could be premature at this stage.

12. Considering the observation of the Hon'ble Apex Court admittedly, it cannot be observed at this stage that there is no involvement of the present applicant in the said offence. But considering that there are reasonable grounds at this stage to hold that the accused is not guilty of the offence as merely on the basis of the statement of the co-accused, his implication is there and therefore, the rigour under Section 37 will not attract in the present case. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(i) The application is allowed.

(ii) The applicant **Maksud Ahmad Aminuddin** shall be released on bail in

connection with Crime No.355/2024 registered with Police Station, Nandanvan, District Nagpur for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on executing PR Bond in the sum of Rs.1,00,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned Police Station once in a month of first Saturday of every month between 10.00 a.m. to 1.00 p.m.

(iv) The applicant shall not directly or indirectly make any inducement threat or promise to any person acquainted with the facts of the case.

(v) The applicant shall furnish his cell phone number and address with the address proof, additionally he shall furnish names of his two relatives and their address proof.

(vi) Needless to mention that the observations made in the order are purely *prima facie* for deciding the present application for grant of bail and the learned Judge before whom the trial will be conducted shall not get influenced by the said observations.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)