

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4119 OF 2024

Nahid Ashraf Memon .. Applicant
Versus
The State of Maharashtra .. Respondent

-
- Mr. Kiran Gogavale, Advocates for Applicant.
 - Mr. Balraj B. Kulkarni, APP for Respondent.
 - PSI – M. T. More, Pydhonie Police Station.
-

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 01, 2025

P.C.:

- 1.** Heard Mr. Gogavale, learned Advocate for Applicant and Mr. Kulkarni, learned APP for Respondent.
- 2.** This is an Application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Bail in connection with C.R. No.129 of 2023 dated 04.11.2023 registered with Pydhonie Police Station for offence punishable under Sections 8(c), 22(b), 20(c) and 29 of the Narcotics and Psychotropic Substances Act, 1985 (for short 'NDPS Act').
- 3.** Applicant is arraigned as Accused No.4 in the present crime on the disclosure made by Accused No.3 of having received delivery of alleged contraband from him. There are total 4 Accused in the present crime. Accused No.1 had already been enlarged on bail despite having

been apprehended alongwith commercial quantity of the alleged contraband. In so far as Accused No.2 is concerned, he was apprehended alongwith intermediate quantity and he is also released on bail. Applicant is incarcerated for past 1 years 6 months 21 days, pending trial.

4. Mr. Gogavale would persuade the Court to consider the fact that there has been no conscious recovery of possession of any contraband from his person but Applicant has been arrested solely on the basis of statement of co-accused recorded by the prosecution Officers in enquiry conducted under Section 67 of the NDPS Act. He would submit that Applicant is a farmer by profession and in so far as recovery of alleged contraband in question is concerned, 1 kilogram and 15 grams of the alleged contraband was recovered from Accused No.1 in the present crime, who has been enlarged on bail.

5. Though prosecution has *prima facie* attempted to link the role of present Applicant with the other co-accused persons from whom the recovery of contraband has been made and also attempted to rely upon the stringent conditions contemplated under Section 37 of the NDPS Act, *prima facie* from the record there is no incriminating material which has been seen by me to establish a live link of present Applicant before me with the other co-accused persons as also in relation to trafficking of the alleged contraband.

6. There is also no incriminating material to show to the Court regarding any money trail leading to the Applicant before me from any of the co-accused person. In that view of the matter, decision of the Supreme Court in the case of *Tofan Singh Vs. State of Tamil Nadu*¹ will come to the aid of the Applicant before me at the bail stage. The Supreme Court in the said decision has stated that confessional statement made before NDPS officers are inadmissible as evidence as they are barred by Section 25 of the Indian Evidence Act.

7. Mr. Kulkarni, learned APP has vehemently opposed grant of bail to Applicant in view of the fact that co-accused persons have been arrested with commercial quantity of alleged contraband and according to the statement of Accused No.3 the said contraband was delivered to him by the present Applicant. He would therefore submit that the onus will lie on Applicant to prove to the Court that he is not guilt of committing any crime or about his complicity in the crime. He would submit that none of the grounds stated in the Application adhere to the Applicant satisfying this Hon'ble Court about his non-complicity in the present crime and therefore Application should be dismissed.

8. Considering that case of prosecution against Applicant is solely based on the disclosure statement made by the co-accused which can be procured by the prosecution at the time of trial and no recovery

¹ (2021) 4 SCC 1.

of any contraband from him, in view of the decision of the Supreme Court in the case of *Tofan Singh Vs. State of Tamil Nadu (supra)*, the Applicant is entitled for bail.

9. In that view of the matter, Applicant has made out a case for grant of bail. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (v) Applicant shall co-operate with the conduct of trial and

attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;

(vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(vii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and

(viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

10. It is clarified that the observations made in this order are limited for the purpose of granting Bail only. They shall not be construed as observations on merit. The trial shall be adjudicated on the strength of evidence led by parties and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

11. Bail Application No.4119 of 2024 is allowed and disposed.