



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

CRIMINAL APPLICATION (ABA) NO.208 OF 2025

Arsalan s/o Mansoor Khan

Vs.

State of Maharashtra, through Police Station Officer, Police Station
Kalamna, District Nagpur

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

Court's or Judge's orders

Mr. S. S. Sitani, Counsel for the applicant.
Ms. M. A. Barabde, APP for non-applicant / State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 23/04/2025

1. Apprehending the arrest at the hands of police in connection with Crime No.199/2025 registered with Police Station Kalamna, for the offence punishable under Sections 8(c), 20(b) (ii) and 29 of the Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act'), the applicant approached this Court for grant of pre-arrest bail.

2. The accusation of the present applicant is on the basis of report lodged by Police Constable Pavan Gajbhiye on an allegation that while the NDPS Cell Crime Branch was on patrolling duty one person was found in a suspicious condition holding one sack and a two wheeler near the plastic factory, therefore he was intercepted, notice under Section 50(1) of NDPS Act was given to him. During the search of the

said sack greenish, blackish flowers, fruits having buds with strong smell, wet ganja was found, accordingly, he was arrested. During interrogation, the name of the present applicant is revealed as the other co-accused has procured the said ganja from the present applicant. On the basis of the said report police have registered the crime against the present applicant.

3. Heard learned Counsel for the applicant who submitted that except the statement of the co-accused, there is no other material to connect the present applicant with the alleged offence. In view of the decision 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 co-accused is not admissible against the present applicant. In view of that, the applicant be released on anticipatory bail.

4. Learned APP strongly opposed for the same and submitted that on the basis of the information received from the co-accused, it reveals during the investigation that the co-accused has procured the said contraband articles from the present applicant. As far as the observation of the Hon'ble Apex Court in the case of **Tofan Singh Vs. State of Tamil Nadu** (referred supra) is concerned, it can be considered in a regular bail application or while considering the final argument of the accused. She placed reliance on the decision of the Hon'ble

Apex Court in the case of **State of Haryana Vs. Samarth Kumar** reported in **2022 SCC OnLine SC 2087**.

5. On hearing both sides and on perusal of the investigation papers it reveals that on the basis of the information received from the co-accused, who was taken into custody which reveals that he has procured the said contraband articles from the present applicant. Except this statement of the co-accused, there is no other material to connect the present applicant with the alleged offence. In view of the observation of the Hon'ble Apex Court in the case of **Tofan Singh Vs. State of Tamil Nadu** (referred supra) the statement recorded under Section 67 of the NDPS Act of the co-accused is not admissible against the other accused. The Hon'ble Apex Court has considered this aspect and observed that in cases of this nature, the advantage of the decision in **Tofan Singh Vs. State of Tamil Nadu** (supra), perhaps can be given 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.

6. In view of the above observation of the Hon'ble Apex Court, the present application deserves to be rejected. Accordingly, I proceed to pass following order:

(4)

926.aba.208.2025

ORDER

The application is rejected.

(URMILA JOSHI-PHALKE, J.)