

MHNS070028362023



S. C. No.199 of 2023

The State of Maharashtra

Vs

Shaikh Irfan Shaikh Chand @

Irfan Andhaya

ORDER BELOW Exh. 2
(Passed on 06/01/2024)

01] This is an application under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to the applicant-accused who has been charge sheeted for the offence p/u/s 457 and 380 of the Indian Penal Code and Section 22 of the N. D. P. S. Act.

02] Ld. APP appeared for the State/Respondent. He opposed the application by filing written say of I. O. at Exh. 3.

03] Heard, Shri. N. P Merchant, Ld. advocate for the applicant-accused and Shri. S. K. Sonawane, Ld. APP for the State/Respondent. Both argued vehemently.

04] Ld. Advocate for the applicant-accused submitted as under :-

Above mentioned crime is registered against applicant-accused. He is arrested on 24.07.2023 and after sufficient police custody, he is remanded in M. C. R. After the completion of investigation police submitted report to the concerned J. M. F. C. Court u/sec.169 of Cr. P. C. Therefore, in the changed circumstances the applicant-accused is praying for regular bail. The applicant-accused has not committed alleged offence. He is implicated in a false case. He could not attend funeral of his father, who died on 13.10.2023. False recovery is shown in the name of applicant-accused. He is the only earning member in his

family. Nothing is remained to be recovered from the applicant-accused. Alleged seized quantity is not the commercial quantity. In fact, Section 22 of the N.D.P.S., Act could not be attracted to the present case. The applicant-accused is having permanent residence. He will not abscond and pressurise the witnesses. He will co-operate the I.O. for further investigation, if any. He is ready to abide all terms and conditions of bail. The applicant-accused is in jail since many days and no purpose would be served in keeping him behind the bars. Merely because other crimes are registered against applicant-accused bail cannot be denied to him as he is entitled for bail in the present case. Therefore, regular bail be granted to the applicant-accused.

05] In support of his submissions, Ld. Advocate for accused relied on following case laws :-

- i) **Rajesh Babanandan Shah @ Damchay Vs. State of Maharashtra, reported in 2006 ALL MR (Cri) 1952.**
- ii) **Maulana Mohd. Amir Rashadi Vs. State of U. P. & Anr. Decided on 16.01.2012, Criminal Appeal No.159 of 2012 by the Hon'ble Supreme Court.**

06] On the other hand Ld. APP for the State submitted as under :-

There is prima facie evidence showing the involvement of applicant-accused in committing the offence. When the applicant-accused was in police custody in connection with offence p/u/s 457, 380 of I. P. C. and when recovery u/sec. 27 of Indian Evidence Act was done the accused was found possessing Bottles of Conex-C- and Raxon T containing contraband drug/psychotropic substance. He was possessing the said drug/psychotropic substance without having any licence or permit for the same. The offence committed by applicant-accused is serious. He has not co-operated for the investigation. At Aayeshnagar

Police Station, Ramjanpura Police Station and Pawarwadi Police Station ten crimes are registered against applicant-accused, therefore he is habitual offender. If bail is granted there is every possibility that the applicant-accused may commit similar kind of offence or more serious offence. Further, he will pressurise the informant and witnesses and tamper with the prosecution evidence. Therefore, his application for bail should be rejected.

07] From the charge-sheet it appears that C. R. No.87/2023 is registered against applicant-accused at Aayeshangar Police Station, for the offence punishable under Section 457 and 380 of the Indian Penal Code. It seems that Section 22 of the N. D. P. S. Act is added latteron on the basis of alleged recovery of contraband drug/ psychotropic substance in the house of accused. Therefore, police submitted charge-sheet under that section also.

08] In the FIR it is alleged that on 22.07.2023 the informant at about 07.00 p. m., came to know from her daughter that the door of their house is not in lock condition, therefore, the informant saw it and noticed that ladies purse of informant which was kept in the dicky of her scooty vehicle was stolen with cash amount of Rs.10,700/- which were kept in the purse. It is stated in the FIR that when CCTV Footage was checked, it was found that the applicant-accused had entered in the house of informant and committed the theft of informant's purse with cash amount in it.

09] As per the prosecution case, the applicant-accused came to be arrested and he was remanded in police custody and during his police custody the applicant-accused gave memorandum and recovery was done u/sec.27 of the Indian Evidence Act. As per the prosecution after recording memorandum of applicant-accused at the place shown

by applicant-accused police found bottles of Conex- C- worth Rs.1,430/-, bottles of Raxon T worth Rs.910 containing contraband drug/ psychotropic substance and cash amount of Rs.3,400/-.

10] In his say the I. O. has submitted the list of crimes registered against applicant-accused. Details of it are as follows :-

Sr.No.	Crime No.	Police Station	Sections
1	16/2020	Aayeshnagar	452, 427, 323, 504, 506 of I.P.C.
2	55/2021	Aayeshnagar	324, 323, 504, 506 of I. P. C.
3.	56/2020	Ramjanpura	394, 397 of I. P. C.
4.	03/2023	Ramjanpura	394, 452, 506 of I. P. C.
5.	108/2022	Ramjanpura	454, 457, 380 of I. P. C.
6.	29/2022	Ramjanpura	4/25 of Arms Act, 37(1)(3)/135 of Maharashtra Police Act.
7.	38/2021	Ramjanpura	326,324, 323, 504, 506 of I. P. C.,4/25 of Arms Act and 37(1)(3)/135 of Maharashtra Police Act.
8.	21/2016	Ramjanpura	147, 148, 149, 152, 182, 39, 353, 495, 436, 427, 506 of I. P. C.
9.	15/2016	Ramjanpura	326, 325, 324, 294, 504, 506, 143, 147, 148, 149 and 4/25 of Arms Act.
10.	15/2023	Pawarwadi	399 of I. P. C. and 3, 4/25 of Arms Act

11] Earlier bail application of the applicant-accused was rejected on the ground that there are various crimes registered against him and investigation is yet to be complete. Ld. Advocate for applicant-accused has filed copy of report submitted by police of Aayeshanagar Police Station to the J. M. F. C. Court, Malegaon u/sec.169 of Cr. P. C. in respect of C. R . No. 87/2023 registered against the applicant-accused. As per the said report there is no evidence against applicant-accused showing his involvement in that crime. Therefore, in the changed circumstances these bail application is filed by the applicant-accused as

the charge-sheet is filed for the offence p/u/s 22 of the N. D. P. S. Act. I have gone through the police papers. It seems that inventory is done. Investigation is complete. However, it is to be noted that certain mandatory provisions of N. D. P. S. Act are not properly followed in the present case as it is the case of prosecution that the alleged recovery was done after recording the alleged memorandum of accused in connection with the crime for the offence p/u/s 457, 380 of the Indian Penal Code. As police have submitted report u/sec.169 of Cr. P. C. in connection with those crimes to the concerned J. M. F. C. Court it can be said that the alleged recovery u/sec. 27 of the Indian Evidence Act is doubtful. The contraband articles/drug substance allegedly found is not following under the category of commercial quantity. There is no certificate of any Chemical Analyst showing how much quantity of prohibited drug substance was found in the bottles which were seized by police. Therefore, prima facie there is reason to believe that the applicant-accused is may not guilty of offence p/u/s 22 (c) of the N. D. P. S. Act.

12] Nothing is produced to show that applicant-accused has been convicted for any offence or he was involved in similar kind of offence previously. The applicant-accused is in Jail since 28.07.2023. No purpose would be served in keeping him behind the bars as it will take time for the commencement for the trial and the conclusion of the case. The applicant-accused is having permanent residence. He is ready to cooperate the I.O. for further investigation, if any. He is ready to abide all terms and conditions of bail. I have gone through the case laws on which the Ld. Advocate for applicant-accused is relying. In those case laws it is observed by the Hon'ble Supreme Court and the Hon'ble High Court that if the accused is entitled for bail considering the facts and circumstances of a particular case then his bail application should not be rejected only on the ground that other crimes are registered or pending against him. In the present case, as the police have submitted report

u/sec. 169 of Cr. P. C. in respect of offences for which the applicant-accused was initially arrested and as the present case is not following under the category of commercial quantity of drug or psychotropic substance prescribed under the N. D. P. S. Act, it can be said that the applicant-accused is entitled for regular bail. So far as objections raised by the Ld. APP for the State are concern, care of it can be taken by imposing certain conditions. Therefore, the application is to be allowed by imposing certain conditions on the applicant-accused. Hence, I pass following order.

ORDER

The application is allowed as under :-

1. Applicant-accused namely Shaikh Irfan Shaikh Chand @ Irfan Andhaya, R/o. Malegaon Dist. Nashik, who is in magisterial custody in connection with C. R. No. 87 of 2023 registered at Aayesh Nagar Police Station, Malegaon for the offence p/u/s 457 and 380 of the Indian Penal Code and Section 22(c) of the N. D. P. S. Act, be released on bail on his executing P. R. bond of Rs. 50,000/- (Rs. Fifty Thousand) with solvent surety/sureties of the like amount and on following terms and conditions :-

- i) The applicant-accused shall remain present at any place as and when called by the I.O. for the purpose of further investigation, if any.
- ii) The applicant-accused shall produce any document/documents, article/articles, mobile phone, and sim card numbers, etc. which may be required by the I.O. for the purpose of further investigation, if any.
- iii) The applicant-accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with facts of accusation, so as to dissuade them from disclosing such facts to the Court or to any Police Officer.
- iv) The applicant-accused shall attend concerned Police Station on every first or third Sunday of each month between 11.00 a.m. to 01.00 p.m., till the conclusion of trial or till further orders.

- v) The applicant-accused shall not commit any offence in future.
- vi) The applicant-accused shall not tamper with the prosecution witnesses and evidence in any manner.
- 2. The applicant-accused shall furnish his detail address and temporary address alongwith the Photo ID.
- 3. The applicant-accused shall furnish names and detail addresses and mobile phone numbers of his three close/blood relatives.
- 4. If there is change in the address of accused No.1, he shall inform about it to the concerned Court and Police Station.
- 5. The applicant-accused to submit his Passport, if any, to the concerned Police Station within 15 days of his release from the Jail.
- 6. Inform accordingly, to the D.G.P./PP and Police Officer of concerned Police Station.

(Soft copy of this bail order be sent to the concerned Jail Authority through E-mail for providing its copy to the applicant-accused)

Date- 06/01/2024.
Malegaon.

(K. R. Patil)
Addl. Sessions Judge, Malegaon.
Dist. Nashik.

