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IN THE HIGH COURT OF BOMBAY AT GOA

**CRIMINAL WRIT PETITION NO.104 OF 2022
WITH
CRIMINAL WRIT PETITION NO.7 OF 2023**

CRIMINAL WRIT PETITION NO.104 OF 2022

Union of India
Narcotics Control Bureau
Sub Zone, Goa,
Through Intelligence Officer ... PETITIONER

Versus

Mr. Kunal Jignesh Sona,
S/o Mr. Jignesh J. Sona
Age:22 years, R/o Bindu
Anmol Apartment, 7th Cross,
Amarajyoti Nagar, Vijaynagar,
Banglore, 560040 ... RESPONDENT

WITH

CRIMINAL WRIT PETITION NO.7 OF 2023

Union of India
Narcotics Control Bureau
Sub Zone, Goa,
Through Intelligence Officer ... PETITIONER

Versus

versus
Mr. Mohammed Sohrab,
S/o Abdul Sajid, 23 years of age,
R/o 11, 3rd floor, Risaldar Street,
Near Kino Theatre,
Sheshadripuram, Bangalore,
North, Karnataka-560020

Mr. Pravin Faldesai, Deputy Solicitor General of India for the Petitioner in WPCR No.7/2023 and WPCR.104/2022.

Mr. Pravin Naik with Ms. Namrata Shirodkar and Mr. Kegan Ferrao for the Respondent in WPCR.7/2023.

Mr. Kamlakant Poulekar, Advocate for the Respondent in
WPCR 104/2022.

**CORAM:- BHARAT P. DESHPANDE, J.
DATED :- 19th November, 2024**

ORAL ORDER.

1. Heard Mr. Faldessai, Deputy Solicitor General of India for the Petitioner and Mr. Pravin Naik and Mr. Poulekar, learned Advocates for the Respondents.
2. The challenge in the present petitions is to the impugned orders passed by the learned NDPS Court while granting bail to the Respondents.
3. Mr. Faldessai would submit that the impugned order would go to show that the same only discusses about the decision passed by the Apex Court in the case of ***Tofan Singh Vs/ State of Tamil Nadu, (2013) 16 SCC 31.***
4. Mr. Faldessai would submit that other investigation carried out by the authority are specifically disclosed in the reply has not been considered or even touched by the learned Court. He submits that the Investigating Agency placed before the Court, the material i.e WhatsApp Chats and Bank Trails which would prima facie show the nexus between the main Accused person and present Respondents to show

suspicion about their involvement in Drugs Trafficking and more particularly, Section 29 of the Narcotic Drugs And Psychotropic Substances Act (NDPS Act for short). It is his contention that the bail has been granted only on the ground that the statement under Section 67 of the NDPS Act wherein there is any confession, is hit by the provision of Section 25 and 26 of the Indian Evidence Act. He submits that the other material is not been considered at all.

5. Per Contra, Mr. Poulekar and Mr. Naik appearing for the Respondents would submit that no interference is required at this stage since the main Accused persons were granted bail by this Court on an observation that the drugs seized from them are not coming within the commercial quantity and thus, Section 37 of the NDPS Act could not be attracted.

6. Mr. Poulekar would submit that this Court in the case of ***Imran Khan Vs. Union of India*** in ***Criminal Application (Bail) No. 24/2022*** observed that as per the FSL report, the quantity recovered from the main Accused cannot be considered as commercial quantity.

7. Mr. Poulekar would further submit that the statements recorded by the concerned officer under Section 67 of the NDPS Act were considered to be not acceptable as evidence and cannot be looked into for implicating the Accused persons. He would submit that the Accused by name Lucky Sharma from whose statement the name of the present Respondents were revealed is also granted bail by this Court in Criminal Application (Bail) No. 8 of 2022 vide order dated 27/04/2022.

8. A perusal of the impugned order would clearly go to show that the learned Sessions Court only deliberated the decision in the case of ***Tofan Singh(supra)*** and did not consider the other material which has been pointed out in the reply of the Investigating Officer. Paragraph Nos. 7, 10 and 14 of the order dated 12/05/2022 passed in the case of one of the Respondents would clearly go to show that the Investigating Agency clearly pointed out that apart from statement under Section 67 there is material in the form of Bank Trails and WhatsApp chats between the present Respondents and the main Accused persons which *prima facie* shows their involvement under Section 29 of the NDPS

Act.

9. The learned Sessions Court in the impugned order failed to consider such material and the order is passed only considering the Judgement of ***Tofan Singh(supra)***.

10. At this stage, it is necessary to mention that the Judgment passed in the case of ***Tofan Singh (supra)*** deals with the conviction or even prosecution of the Accused only based on statement under Section 67 of the NDPS Act. The ratio in that decision will apply only when the case is solely based on the statement under Section 67 of NDPS Act. It is the bounden duty of the Court to look into such other material collected by the Investigating Agency, even while deciding bail application.

11. The impugned order would go to show that the learned Trial Court inspite of recording the contentions of the Investigating authority, failed to consider such other aspect and granted Bail only on the observations of the Apex Court in the case of ***Tofan Singh (supra)***.

12. As far as, such observations are concerned which are

based on Section 67 statement, same cannot be faulted with. However, it is also expected from the Court to deal with other issues/arguments advanced while arguing the bail application and more particularly, the material collected by the Investigating Agency apart from statement under Section 67 of the NDPS Act.

13. Besides, the matter is of the year 2022 and all the main Accused persons from whom the drugs were recovered/attached are already released on bail by this Court/by the Sessions Court. Accordingly, no purpose would be served in cancelling the bail granted to the present Respondents and that too, after a period of two years. The matter is now fixed for arguments before charge. There are no allegations against the present Respondents about violating the conditions of bail.

14. Accordingly, the petitions filed by the Petitioner could be disposed of on the grounds that other Accused persons are already released on bail and therefore, the discretion which is available to this Court need not be exercised in favour of the Petitioner, considering the above facts and circumstances.

15. However, the Court while dealing with bail application must consider all the contentions raised by the Investigating Agency while deciding bail application.

16. With these observations the Writ Petitions stands disposed of.

17. No costs.

BHARAT P. DESHPANDE, J.