

(2024) 12 BOM CK 0015

In the Bombay High Court

Case No : Criminal Writ Petition No. 4125 Of 2024

Rahul Madan Sharma

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 06-12-2024

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 8(c), 27

Citation : (2024) 12 BOM CK 0015

Hon'ble Judges : Sarang V. Kotwal, J;Dr Neela Gokhale, J

Bench : Division Bench

Advocate : Ashish Jha, Vinod Chate

Final Decision : Disposed Of

Judgement

Sarang V. Kotwal, J

1. Heard Mr. Ashish Jha, learned counsel for the Petitioner and Mr. Vinod Chate, learned APP for the Respondent – State.

2. This Writ Petition is already admitted. By consent of the parties, it is taken up for final hearing. Learned counsel for the Petitioner submitted that the Petitioner is a young Engineer and he proposes to study abroad for further education. Considering his future, we have heard the Petition finally which was already admitted vide order dated 1.10.2024.

3. This Petition is for quashing and setting aside the proceedings pending before the J.M.F.C., Vasai vide S.C.C. No.548/2021 under Section 8(c) read with 27 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the N.D.P.S. Act). The prosecution case is reflected in the FIR lodged by Shri Kiran Avhad, Police Constable attached to Manikpur police station. The FIR is lodged at the said police station vide C.R. No.II-36/2021 dated 7.2.2021. It is mentioned in the FIR that the informant and his team had received instructions from their superiors to conduct raid within jurisdiction of their police station against the persons who were consuming narcotic drugs. The informant's team called two

panchas. They started patrolling in that area in civil dress. At about 7.00 p.m. on 7.2.2021 they came near Sun City. They received secret information that two persons were consuming narcotic drug in an open place in front of a temple.

The informant's team went there. It is the case of the prosecution that two persons took out something from their bag and kept that substance in their pipe and started smoking. The informant's team was convinced that those two persons were smoking Ganja. They encircled those two persons. The FIR does not mention as to what happened to the second person. The present Petitioner was apprehended. According to the first informant his eyes did not look normal and his fingers and nails had blackish tinge. When they asked the Petitioner as to what he was doing, he told them that he was smoking Ganja. Interestingly the FIR further mentions that the informant's team destroyed the pipe, the substance which was with the Petitioner which the informant describes as tobacco mixed Ganja, match box and burnt match sticks. All the articles were destroyed. They gave an option to the Petitioner to take him to the nearest Magistrate or a Gazetted Officer for his personal search. He declined the offer. The raiding party then conducted his personal search. Nothing objectionable was found on his person. He was arrested and was sent for medical examination at D.N. Petit Hospital, Parnaka, Vasai West. On this basis, the FIR is lodged.

4. Learned counsel for the Petitioner invited our attention to the investigation reflected in the charge-sheet. He submitted that there is nothing to show that the Petitioner was smoking Ganja. The statement made by him before the police officer is not admissible. Therefore, the investigating agency had to establish, at least prima facie that the Petitioner was smoking Ganja then only they could have filed the charge-sheet. In the present case, there is absolutely nothing to show that the Petitioner was smoking Ganja or was in possession of Ganja. Nothing was seized. As admitted by the first informant, the articles were destroyed at the spot itself. Therefore, there is no incriminating material against the present Petitioner.

5. Learned APP relied on the allegations made in the FIR and other documents in the charge-sheet to oppose these submissions.

6. We have considered these submissions and we have perused the charge-sheet annexed to this Petition. The charge-sheet contains the panchnama signed by the two panchas. It is the exact replica of the allegations in the FIR. There is a statement of the other team member, namely, Police Nayak Kalpesh Keni. Even his statement is exactly the same. Beyond that, there is absolutely nothing in the entire charge-sheet. Since the seized articles were already destroyed, there is no question of getting FSL report to prove or even to indicate that the Petitioner was smoking Ganja. There was no reference as to what happened to the other person. Therefore, it is quite clear that there is no material against the Petitioner. However, he was needlessly prosecuted and is unnecessarily suffering from 2021.

7. The entire investigation is extremely doubtful and suspicious. Apart from that,

no offence is made out against the Petitioner in the entire charge-sheet. Continuation of the proceedings would be an abuse of process of law. There are absolutely no chances of conviction in this case. Therefore, the Petition deserves to succeed.

8. Hence, the following order:

::ORDER::

i. The FIR registered vide C.R. No.II-36/2021 dated 7.2.2021 registered at Manikpur Police Station, District Palghar as well as the criminal proceedings being S.C.C. No.548/2021 pending before the J.M.F.C.. Vasai, are quashed and set aside.

ii. The Petition is disposed of accordingly.