

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 729 OF 2015

Himanshu Atul Khanvilkar. ... Applicant.
Versus
The State of Maharashtra. ... Respondents.

Mr. A.H.H. Ponda a/w. Mr. Hemant Ingale i/b. Mr. Tushar N. Khandare, advocate for Applicant.

Ms. R.M. Gadhavi, APP for State.

Mr. S.S. Khandre, API, R.A.Kidwai Police Station, Mumbai.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 3, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 29/1/2015 in Crime No. 48 of 2015 registered at R.A. Kidwai Marg Police Station for offence punishable under Section 328 read with Section 34 of the

Indian Penal Code. The investigation is completed and charge-sheet is filed on 27/4/2015.

3 It is the prosecution case that on 29/1/2015 Vijay Thorat, a police personnel of R.A. Kidwai Marg Police Station lodged a report alleging therein that on 28/1/2015 they had received a secret information that the present applicant is selling drugs. The police had gone to the spot stated in the secret information. It is alleged that the applicant was selling Maphedrone. Upon enquiry, the person seized with the drug had disclosed his name as Himanshu Atul Khanwilkar i.e. present applicant. He was taken into custody. Seizure panchanama was recorded. The applicant was in possession of 400 gm. Mephedrone powder.

4 Initially Mephedrone was classified under the Drugs and Cosmetics Act. However, by an notification dated 5th February 2015 issued by the Ministry of Finance, it has been classified under the Narcotics Drugs and Psychotropic Substances Act. In any case,

retrospective effect cannot be given to the notification and hence, in the present case, it will have to be inferred that on the date of incident it was classified under the Drugs and Cosmetics Act.

5 The learned Counsel for the applicant submits that the applicant was found to be in possession of the said drug. There is nothing to indicate that he had administered the said drug to anybody nor had induced any person with false representation to consume the said drug. The applicant has been in jail for about 6 months. Investigation is completed and charge-sheet is filed. Hence, the applicant deserves to be enlarged on bail. According to learned Counsel, offence under section 328 of the Indian Penal Code is not attracted.

6 It is made clear that the observations made hereinabove are prima facie in nature and shall not be considered for the purpose of quashing of FIR, discharge application or at the time of trial.

7 The Investigating Officer is present in the Court. The learned APP upon instructions submits that two accused are absconding. The investigating officer present in the court submits that inadvertently have been shown as wanted accused, whereas they have to be shown as absconding accused in the charge-sheet, so that at the time of trial they can be prosecuted with the aid of section 299 of the Code of Criminal Procedure, 1973. The learned APP upon instructions submits that the Investigating Officer would get the charge-sheet either rectified or file an application under Section 173(8) of the Code of Criminal Procedure, 1973 to show that rest of the two accused are absconding accused. Learned APP also assures that, if need be, the Investigating Officer would take steps under Section 81 of the Code of Criminal Procedure, 1973 against the absconding accused.

8 In view of the above facts and the submissions advanced across the bar, following order is passed :

ORDER

- (i) The application is allowed.
 - (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or two sureties in the like amount.
 - (iii) The applicant shall report to the concerned police station on 1st Sunday of every month till conclusion of the trial.
- 9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)