

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL BAIL APPLICATION NO.1600 OF 2015

Shashikala Ramesh Patankar
@ Baby Patankar ... **Applicant**
V/s.
The Staet of Maharashtra ... **Respondent**

Mr.N.N.Gawankar with M.N.Gawankar i/b. S.B.Shetye, Advocate
for the Applicant.
Mr.D.P.Adsule, APP for the Respondent/State.
Mr.Deepak Bhiko Humbare,Sub-Divisional Police Officer, Wai,
Satara present in person.

CORAM : ABHAY M. THIPSAY J.

DATED : 9TH SEPTEMBER 2015

ORAL ORDER :

1. Heard Mr.N.N.Gawankar, the learned counsel for the applicant. Heard Mr.D.P.Adsule, the learned Additional Public Prosecutor for the respondent/State. I have also heard the Investigating Officer-Dipak Humare, who has filed a counter affidavit in the matter and who is present before the Court.

2. The applicant is one of the accused in C.R.No.3 of 2015 registered by Khandala Police Station, District Satara. The applicant and other accused are alleged to have committed

offences punishable under Section 22(c) read with Section 8(c) of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act). The applicant is in custody since 9th May 2015. Investigation is complete and charge-sheet has been filed on 5th September 2015 against the applicant and the other two accused.

3. The prosecution case is that on 09/03/2015, Padmakar Ghanwat, Inspector of Police attached to Local Crime Branch, Satara, received secrete information to the effect that one Dharmraj Baburao Kalokhe, a policeman from Mumbai Police, had kept a stock of Mephedrone – a psychotropic substance - in his house at village Kanheri, Tal.Khandala, Dist.Satara. On receipt of this information, the police party raided the house of the said Dharmraj Kalokhe and found 112 kilogram of '*Mephedrone like substance*' (मेफेड्रोने सदृश्य). The said Dharmraj Kalokhe was arrested. When he was interrogated, he disclosed that he had procured the said substance called 'Mephedrone' from the present applicant and her son-Satish. Based on this statement, the applicant and her son came to be arrested.

4. It is conceded before me that except the statement of the co-accused Dharmraj Kalokhe recorded by the police in the course of investigation, there is no other material to connect the applicant with the Mephedrone recovered from the house of the said co-accused. That, this is so, is confirmed not only by the

Additional Public Prosecutor but also by the Investigating Officer, who is present before the Court on specific questioning. That such a statement by a co-accused before the police though could be taken into consideration during the investigation and for the purposes of investigation, cannot be considered as material against the applicant, after the charge-sheet is filed, cannot be – and has not been – disputed.

5. The applicant would certainly be entitled to be released on bail only on this count – in as much as, there appears to be no *prima facie* case against her – still, some other glaring weaknesses in the prosecution case, as pointed out by Mr.Gawankar, the learned counsel for the applicant, may also be noted.

6. Mr.Gawankar points out that as per the prosecution case, the applicant was in possession of the substance 'Mephedrone', sometime in July 2014, when the said substance was not notified as a '*psychotropic substance*'. He submits that it was added in the Schedule appended to the Act only on 5th February 2015. He, therefore, submits that possession of Mephedrone prior to 05/02/2015 would not be an offence punishable under the NDPS Act, in view of Article 20(1) of the Constitution.

7. Apart from this, it appears that the report received from Forensic Science Laboratory (FSL), where a sample of the

seized substance was sent for examination, is 'Nil'. In other words, the report of FSL reveals that the substance seized is **not Mephedrone**. The learned Additional Public Prosecutor does not dispute this, but states that after obtaining permission from the trial Court another sample of the said substance has now been sent to the Central Forensic Science Laboratory at Hyderabad and report from the said laboratory is awaited.

8. I have considered the matter.

9. Even if the best is expected for the Investigating Agency and it assumed that the report received from the CFSL would be that the seized substance is 'Mephedrone', the same would be relevant only with respect to the co-accused Dharmraj Kalokhe, who was allegedly found to be in possession of the said substance.

10. The allegation against the applicant is without any support. In the first place, there is nothing to show that substance seized is indeed Mephedrone or any other psychotropic substance. On the contrary, the report from FSL indicates that it is not a psychotropic substance. Secondly, even assuming – *just for the sake of arguments and without the support of any material* – that the seized substance is indeed Mephedrone, admittedly, it has been included in the list of psychotropic substances, specified in

the Schedule to the NDPS Act, only in February 2015. As per the prosecution case itself, the applicant was in possession of the said substance sometime in July 2014, when Mephedrone was not listed in the Schedule as a 'psychotropic substance'. Thirdly, the substance in question was found in possession of Dharmaraj Kalokhe and not of the applicant; and except the statement of the said Dharmaraj Kalokhe, a co-accused, there is nothing to show the connection of the applicant with the said substance. Unfortunately, inspite of this position, the learned Additional Sessions Judge rejected the application of the applicant for bail.

11. I have gone through the order passed by the learned Additional Sessions Judge rejecting the application for bail. I find that the contentions taken before this Court, were raised before the learned Additional Sessions Judge also, but he did not deal with those contentions, and merely observed that the '*offence was of a serious magnitude*' and, therefore, the applicant should not be released on bail. The learned Additional Sessions Judge forgot that magnitude of the offence is one thing and connection of an accused with that offence is quite another. That the offence is of serious magnitude will not excuse the Court from examining whether a *prima facie* case exists against the person alleged to be the offender.

12. The applicant should be released on bail forthwith.

13. The application is allowed.
14. The applicant is ordered to be released on bail in the sum of Rs.30,000/-, with one surety in like amount, or two sureties in the sum of Rs.15,000/- each.
15. Since there may be a possibility of further investigation being carried out, it is directed that the applicant shall remain present before the Investigating Officer for the purpose of investigation/ interrogation, as and when reasonably required by the Investigating Officer.

(ABHAY M. THIPSAY J.)