

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1496 OF 2018

Mohsin Mohammed Khan ...Applicant.
vs.
The State of Maharashtra ...Respondent.

Mr. Dilip Mishra i/by Ayaz Khan for the Applicant.
Smt. J.S Lohokare, APP. for the State.

CORAM : A.S.GADKARI, J.
DATE : 6th August, 2018

P.C.

1. This is an application under Section 439 of the Cr.P.C. for bail in CR No. II-26/2017 dated 28.3.2017 registered with Shil Daighar Police Station, Thane under Section 8(K) and 22 of the N.D.P.S. Act, 1985.
2. Heard the learned counsel for the applicant and the learned APP. Perused the charge sheet.
3. The prosecution case in brief is that, after receipt of secret information by the Investigating Agency that, the applicant was to come near Mumbra Railway Station for sale of Crystal Mephedrone (MD) powder to accused namely Mois Lokhandwala, a trap was laid. As per the information, the applicant arrived at the said spot when he was accosted by the

Investigating agency. It is alleged that, after giving appraisal u/s. 50 of NDPS Act a search of applicant was conducted and 91- Grms of Crystal Mephedrone (M.D.) Powder was found on the person of the applicant. After completing the necessary legal formalities, the applicant was arrested immediately on 28.3.2017 and after completion of investigation, the police have submitted charge sheet.

4. The appraisal as contemplated under Section 50 of the NDPS Act and as given to the applicant in writing by the Investigating Agency which is annexed at Page 38 to the present application is an incomplete and improper appraisal. The applicant was not apprised of his legal right that, he was also having right to be searched before the Magistrate. The word right is absent in the written appraisal given to the applicant by the investigating agency.

5. In view thereof, it prima facie appears that, the right of applicant as contemplated under Section 50 of the NDPS Act has been violated and the recovery of the alleged contraband made at the instance of the applicant becomes doubtful. In view of the decisions of the Supreme Court in the case of State of Punjab vs. Baldev Singh reported in (1999) SCC 172 followed in

the case of State of Rajasthan vs. Parmanand and anr. reported in (2014) 2 SCC (Cri.) 563 the applicant is entitled to be released on bail.

Hence, the following order.

- a) The applicant be released on bail in CR No. II-26/2017 dated 28.3.2017 registered with Shil Daighar Police Station, Thane on his furnishing PR bond of Rs.50,000/- with one or two solvent local sureties in the like amount.
- b) Before his release from Jail, the applicant shall submit photo copies of the documents of his residence with before the Investigating Agency.
- c) After his release from Jail, the applicant shall attend the office of Anti Narcotics Cell, Crime Branch, Thane on every first Monday of the month between 11.00 a.m. and 1.00 p.m. initially for a period of six months and thereafter on every first Monday of the month till the conclusion of trial.
- d) Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)