

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.1743 OF 2018

Kamail @ Komil Anwar Ali Merchant .. Applicant

Vs.

State of Maharashtra .. Respondent

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Ms.Suvidha Patil i/b. M/s.Patil Associates, Advocate for the Applicant.

Mr.A.R. Kapadnis, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 22, 2018.

P.C. :

This is an application for bail in N.D.P.S. Special Case No.58 of 2018. Applicant was arrested on 17th December, 2017, vide C.R.No.II-116 of 2017, registered with Mumbra Police Station, District-Thane, for the offences punishable under Sections 8(c), 22 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (“N.D.P.S. Act”, for short). He was remanded to custody from time to time.

2 The case of the prosecution is that on 14th November, 2017, secret information was received by the police that on 14th November, 2017, two persons would be coming up opposite gate

of Kalshekar Hospital at Mumbra, District-Thane by car. Information was reduced into writing, which was forwarded to ACP. Panchas were arranged. Pre-trap panchanama was recorded and the raiding team proceeded to the spot. Two persons resembling the description came to the spot by car. They were accosted by raiding party. They gave their names as Mubassir Matwankar and Mohammad Khan. They were searched and 55 grams of MD was recovered from possession of accused no.1 and 20 grams of MD was found in possession of accused no.2. Subsequently, applicant was accosted after arrest of accused no.4. Applicant was not found in possession of any contraband. It is alleged that applicant is involved in selling the contraband. On completing investigation, charge-sheet has been filed.

3 Applicant preferred an application for bail before the Sessions Court, which was rejected by order dated 18th June, 2018.

4 Learned counsel for the applicant submitted that there is no evidence to show involvement of the applicant in the crime. There is no recovery of any contraband, at the instance of the applicant. Applicant was a police informant and was receiving

threats being police informant. Applicant had lodged complaint in that regard. Applicant was awarded the certificate by the Commissioner of Police for the good work done in Vartaknagar Police Station bearing case no. 3056 of 2016, registered under the provisions of N.D.P.S. Act. It is further submitted that accused no.4 was also not found in possession of any contraband, and, he has been granted bail. Other accused were also released on bail. Applicant is being impleaded on the basis of the statement of co-accused, which is not admissible in evidence. Prosecution is also relying upon the statement of witnesses, which were recorded belatedly, wherein it is stated that the applicant sells contraband. It is submitted that there is no corroboration to the said statements, as admittedly, there is no recovery, at the instance of the applicant.

5 Learned APP submitted that although there is no recovery at the instance of the applicant, there is evidence to indicate that the applicant is dealing in narcotic drug. It is submitted that the statements of witnesses were recorded, which show the complicity of the applicant in selling the contraband. The statement recorded during the course of investigation indicate that there is substantial evidence against the applicant.

Prosecution has also registered the offence under Section 29 of the N.D.P.S. Act, alleging conspiracy and the applicant is conspirator in the crime. Learned APP relied upon statement of Ahmed Javed Khan, Pankaj Sinha, Haidar Ali Sayyed and Mohammad Shaikh.

6 Having heard both sides, I have perused the charge-sheet. Admittedly, there is no recovery of any narcotic drug from the applicant. Prosecution case is that two persons were found in possession of contraband. Subsequently, other accused were arrested. It is pertinent to note that accused no.4 was not found in possession of any contraband. He is granted bail by the Sessions Court. The other accused was found in possession of contraband were also granted bail. The applicant is being impleaded, as alleged conspirator. However, except the statement of the co-accused, there is no cogent admissible evidence against the applicant to show his involvement in the present crime. Prosecution is relying on the statements of the witnesses referred to hereinabove. However, merely on the basis of said statements and in the absence of any recovery from the possession of the applicant, he cannot be subjected to custody. Statement of Ahemd Khan was recorded on 1st December, 2017, wherein he has

referred to the earlier instance that he had consumed Mephedrone after collecting the same from one Siraj Shaikh. Respondents have not arrested Siraj Shaikh, who had allegedly provided contraband to the said witness. The incident referred to by the said witness had occurred two years ago. Statement of Pankaj Sinha was recorded, who has also referred to the incident which had occurred 10 months ago. According to him, he is the friend of the accused. He has stated that the applicant-accused had provided him narcotic drug, which was consumed by him. The other statements are also of similar nature. Statements were recorded belatedly. Applicant was, however, not found in possession of any narcotic drug or selling the narcotic drug in the areas, which were referred to by the witnesses. Apparently, the person who was found in possession, were granted bail and the applicant continues to be in custody. Taking into consideration the aforesaid circumstances, case for grant of bail is made out.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.1743 of 2018, is allowed;
- (ii) Applicant is directed to be released on bail in

connection with C.R.No.II-116 of 2017, registered with Mumbra Police Station, District-Thane, which is subject matter of N.D.P.S. Special Case No.58 of 2018, pending before the Special Judge under N.D.P.S. Act, Thane, on his furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;

- (iii) Applicant is directed to attend Mumbra Police Station, District-Thane, once in a month on first Saturday of the month between 11:00 a.m. to 01:00 p.m., till further orders;
- (iv) Applicant shall not tamper with the evidence;
- (v) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)