

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

CRIMINAL BAIL APPLICATION NO. 3022 OF 2018

Ajaz Mohd. Shafi Khan	... Applicant
Vs.	
The State of Maharashtra	... Respondent

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Mr. Ayaz Khan a/w Ms. Zehra Charania and Ms. Sheetal Shah for the applicant.

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

Mr. S.R.Mutkule, API, Crime Branch, Navi Mumbai is present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 7th DECEMBER, 2018.

P.C.

1. This is an application for bail under Section 439 of Code of Criminal Procedure. The applicant was arrested on 23rd October, 2018 in connection with C.R. No. 210 of 2018 registered with C.B.D. Belapur Police Station for the offence punishable under Section 8(c) read with 22(b) of N.D.P.S. Act.

2. The prosecution case is that Complainant attached to Anti Narcotic Cell and Property Cell of Crime Branch, Navi Mumbai had received an information that accused is coming to sell MDMA to his customers at Hotel K-State, Sector-11, CBD Belapur between 22.00 hours to 23.00 hours. The complainant furnished the said

information to Police Inspector Ravindra Budhwant and reduced the same in the station diary. The information was conveyed to ACP & DCP of Crime Branch, Navi Mumbai. The copy of information was also forwarded to superior officer for permission to conduct the raid. After receiving the permission to conduct the raid, the panchas were called in the office, the raiding material was taken in custody and a pre-trap panchanama was prepared which was completed at 21.00 hours on 23rd October, 2018. The raiding party left the police station and reached Hotel K-Start at 21.40 hours. On inquiry at the reception counter, the officer learnt that the accused was occupying the room No. 6003 of said Hotel and on knocking the door the applicant had opened the door. Raiding party introduced themselves and entered into the room. On being searched 8½ pills of contraband substance alleged to be MDMA were recovered from the pant pocket of the applicant. The said pills were found to be weighing 2.30 gms. Officer drew one sample of 0.20 gms. (1 pill) and kept the same in a plastic pouch by stapling the same. The plastic pouch was again kept in a khakhi envelope and the label was affixed thereon which was signed by the officer and the panchas and the same was sealed and marked as A-1. The other remaining bulk quantity was

weighed alongwith plastic pouch and it was found to be 2.10 gms. The same was stapled, kept in an envelope, labels were affixed, the same was packed and sealed. The applicant was arrested and taken into custody. Subsequently, he was produced before the competent Court for remand. By order dated 23rd October, 2018, applicant was remanded in police custody till 25th October, 2018. On the next date he was remanded to judicial custody.

3. Applicant had preferred an application for bail before the Sessions Court which was rejected by order dated 2nd November, 2018.

4. Learned counsel for the applicant submitted that the contraband which was recovered from the applicant was weighing 2.30 grams of MDMA which is non-commercial quantity. It is also submitted that after the seizure of the contraband the sample was drawn from one pill which was weighing 0.20 grams. The sample drawn in present case is in violation of the mandate of Hon'ble Supreme Court. Section 37 of NDPS Act will not be attracted as the seized contraband is non-commercial quantity. Learned counsel for the applicant relied upon the several decisions. Particularly, he also placed reliance of the Hon'ble Supreme Court in the case of **Birbal Prasad @ Birbal Prasad Sah @ Birbal**

Prasad Sao @ Birbal Sah V/s State of Bihar¹, in the said case bail was granted in respect to contraband of non-commercial quantity. Learned advocate also relied on several decisions of the Court wherein it was observed that when the contraband does not fall within category of commercial quantity rigors of Section 37 of NDPS Act would not apply. In the factual matrix of this case, the applicant is found to be in possession of non-commercial quantity and in view of settled principles of law the rigors of Section 37 would not attract. There are no criminal antecedents under the NDPS Act against the applicant.

4. Learned APP submitted that the applicant was found in possession of the 2.30 grams MDMA. The co-accused is absconding.

5. The Sessions Court, while rejecting application for bail has observed that one Lalit resident of Punjab is absconding. His address and full name is not yet revealed. The said absconding accused is to be traced and arrested in this case. If the applicant is released on bail there is every possibility that the applicant will help the absconding accused and tamper with the prosecution evidence. Although, the applicant has been in custody since the

1. (2018) 2 SCC (Cri) 672

date of arrest, no details of such person were revealed. The applicant contends that he is social activist and runs an NGO. He is an actor and running production house. In the light of legal principles and factual aspects of the matter, case for grant of bail is made out. Hence, I pass the following order.

ORDER

- i. Criminal Bail Application is allowed;
- ii. Applicant is directed to be released on bail in connection with C.R. No. 210 of 2018 registered with C.B.D. Belapur Police Station on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iii. Applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of four weeks;
- iv. Applicant shall report to the concerned Police Station once in a month on first Saturday between 10 a.m. to 12 noon till further order.
- v. Applicant shall not tamper with the evidence.
- vi. Criminal Bail Application stands disposed off.

(PRAKASH D. NAIK, J.)