

Anand

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

BAIL APPLICATION NO. 2983 OF 2017

Mrs. Shahnaz Siddiq Galiyar .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. N. D. Deboo, Advocate, for the Applicant

Mrs. A. A. Takalkar, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 10.04.2018

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks her enlargement on bail in connection with C. R. No. 59 of 2016 registered with the Anti Narcotics Cell, Bandra Unit, Mumbai, for the alleged offences punishable under Sections 8(C) r/w 22(C), 29 of the Narcotic Drugs And Psychotropic Substances Act.

3. Perused the papers. The Complainant – Milind Bhosale, Police Naik, received secret information (on 06.05.2016), while he was on duty at Bandra, ANC Unit. The information received was, that

one person i. e. Razzak was selling Mephedrone (MD) through his agents in the sub-urban area of Mumbai and that on that day between 2.00 p. m. and 3.00 p. m., his agents namely Saeed, Asif and Shahnazbano (Applicant) would be coming for selling Mephedrone (MD) to their customers at the Tagore Nagar Junction, Vikhroli (E), Mumbai, in a motor car bearing No. MH-02/PA/7188. The description of the persons was also supplied by the informant. Pursuant thereto, after recording the information in station diary and after informing the superiors, they proceeded to the said spot and a trap was laid. At about 2.15 p. m., a motor car bearing No. MH-02/PA/7188 came on the spot, pursuant to which, the car was surrounded. One lady i. e. the Applicant was at the driver's seat and two persons were sitting on the rear seat. On enquiry, the persons sitting on the rear seats disclosed their names as Ramzan Ali Mohamad Hanif Lokhandwala alias Saeed and Asif Akbar Khan. In their personal search, Mephedrone (MD) of 250 gms each, was found from their person. The lady at the driver's seat disclosed her name as Shahnaz Siddiq Galiyar (Applicant) and in her personal search, 45 gms of Mephedrone (MD) was found in her purse. Thereafter, the vehicle was searched and about 1355 gms of Mephedrone (MD) powder was found below the rear seat of the vehicle. Pursuant thereto, a complaint was lodged and the accused were arrested. After

investigation, charge-sheet was filed. Learned counsel for the Applicant contended that the bar of Section 37 will not apply, as the quantity found on the person of the Applicant was only 45 gms i. e. less than the commercial quantity and hence the Applicant be enlarged on bail. Learned counsel for the Applicant also submitted that the vehicle belonged to accused No. 2 and therefore, the question of conscious possession would not arise vis-a-vis the Applicant.

4. Learned APP relied on the Judgment of the Apex Court in the case of *Madan Lal And Another Vs. State of Himachal Pradesh*, reported in *(2003) 7 Supreme Court Cases 465*. The Apex Court has held that once possession is established, the burden is on the accused to prove that it was not conscious possession. In the said case, i. e. in the case of *Madan Lal And Another (Supra)*, Charas was recovered from the car in which the accused were travelling and on facts, the Apex Court observed that not only possession, but conscious possession was established and all the accused therein, including the driver of the vehicle were convicted.

5. In the present case, 45 gms of Mephedrone (MD) were recovered in the personal search of the Applicant from her purse and

1355 gms of Mephedrone (MD) powder was found below the rear seat of the vehicle. Whether or not the Applicant was in conscious possession of the commercial quantity or not, is a matter which will be decided by the trial Court. Considering the *prima facie* material as against the Applicant, this is not a fit case to enlarge her on bail. Hence, the Application stands rejected, however, the trial of the Applicant is expedited.

6. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

(REVATI MOHITE DERE, J.)