

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2590 OF 2018

Abrar Ibrahim Shaikh, Age 43 years,
R/o.Ruby Apartment, C-Wing,
Flat No.2102, Mumbra-400 612.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Kamlesh Y. Mali I/by S.R.Phanse for applicant.

Mrs.G.P.Mulekar, APP, for State.

Mr.Nitin Pagar, API, Rabale Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 6th February 2019

PC :

1. The applicant was arrested on 13th July 2018 in connection with CR No.I-293 of 2018 registered with Rabale Police Station for offence under Sections 8C, 22 and 29 of Narcotic Drugs and Psychotropic Substance Act, 1985. The case of prosecution is that on 13th July 2018 information was received that one person is going to sell contraband M.D.Mephedrone near Keni Chowk, Sector-10, Airoli. The information was forwarded to the superior officer. Pre-arrest panchanama was recorded. One person was apprehended along with co-accused. Nothing was found in possession of the co-accused, however, the applicant was found in possession of 14.5 gms of Methaqualone powder. After CA report it was determined to be Metamfetamine. The FIR was registered, investigation was conducted and charge sheet is filed.

2. The contention of the applicant is that the applicant was found in possession of 14.5 grams of Methaqualone which is non commercial quantity. There are no criminal antecedents against the applicant. It is submitted that rigors of Section 37 of NDPS Act would not attract in this case as the contraband which was recovered in the quantum which is non commercial quantity. It is submitted that there are no antecedents against applicant. Learned advocate for applicant relied upon following decisions :

- (i) Birbal Prasad @ Birbal Prasad Sah @ Birbal Prasad Sao @ Birbal Sah Vs. State of Bihar – (2018)11-SCC-488;
- (ii) Govindprasad Amritlal Burman Vs. State of Maharashtra – 2004-ALL M.R. (Cri)-635;
- (iii) Jagan Parasram Chavan Vs. The State of Maharashtra 2014-ALL MR (Cri)-4589;
- (iv) Raju @ Mohd. Hussain s/o Ahmad Ali Vs. State of Maharashtra 2004(4)-Mh.L.J.-625.

3. Learned APP, on instructions, submitted that the contraband recovered from the applicant is non commercial quantity and it is not disputed that there are no antecedents against applicant.

4. In the decisions relied upon by the advocate for applicant the Courts have dealt with the issue relating to applicability of Section 37 of NDPS Act qua non commercial quantity and considering the fact that there were no antecedents against the applicant therein, bail was granted. Considering the observations made by the Apex Court in the decision referred above and considering the fact that there are no antecedents against the applicant and the quantity

recovered from the applicant was allegedly non commercial quantity, bail can be granted to him.

5. Hence, I pass following order :

ORDER

- (i) Criminal Application No.2590 of 2018 is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with NDPS Special Case No.77 of 2018 pending in the Court of Special Judge, Thane (CR No.I-293 of 2018 registered with Rabale Police Station), on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report Rabale Police Station once in a month on every first Saturday between 11 am and 1 pm till conclusion of trial;
- (iv) The applicant shall provide details of his residential address and mobile number to the investigating officer after he is released on bail.

(PRAKASH D. NAIK, J.)

MST