

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO. 223/2021**

Rajesh Dadarao Sonavane

.....Applicant /**(Orig.Accused no.1)****V/s.**State of Maharashtra
(At the instance of
Malvani Police Station)**....Respondent***** * * ***

Mr. Advait Tamhankar, Advocate for the applicant.

Mr. Amit A. Palkar, APP for State.

CORAM : SANDEEP K. SHINDE, J.**Thursday, 12th August, 2021.****P.C. :**

1. Heard learned Counsel for the applicant and learned APP for State.

2. It is an application for bail.

3. Applicant was apprehended by Malwani Police Station on 12th June, 2018 at Autorickshaw Stand, Madh Jetti, Madh, Malad (West), was found possessing 55 gms Mephedrone (M.D.). Chargesheet has been to be filed against him and co-accused, Nilesh Hajare who allegedly sold the contraband to the applicant.

3. Mr. Tamhankar, learned Counsel appearing for the applicant, has argued that, the recovery of the contraband stands vitiated for the reason that the alleged recovery panchanama was drawn in the presence of habitual and stock panchas. The next ground is that, there is a discrepancy as to drawing of the samples, vis-a-vis, the samples sent to the Chemical Analyser. It is contended that the seizure panchanama, shows two samples of one gram each of Mephedrone i.e. A-1 and A-2 were taken. Out of those samples, A-1 only was handed over to carrier Police Constable, Popat Kundale for producing the same to the Forensic Science Laboratory, Mumbai. In support of this submission, Counsel for the applicant relies on the statement of Tukaram Hanurkar, a storekeeper (Malkhana) where, samples were stored and the statement of Popat Kundale, Constable who carried the samples to the

Forensic Science Laboratory. Learned Counsel would also rely on the copy of the extract of Register maintained at Malkhana, where the samples were stored. Be that as it may, from the statements of Tukaram Hunarkar and Popat Kundale, it is pointed out that the storekeeper, Tukaram handed over the one sample. Carrier also carried one sample. Yet, the Chemical Analyser submitted report in respect of two samples i.e. A-1 and B-1. Submission is that, when only one sample was deposited with the Forensic Science Laboratory, how there could be a report in respect of two samples. It is therefore contended that, there is material variance and/or discrepancy in the evidence of the prosecution which goes to the root of the case and renders analyser's report indefinite and unsure. Submission is, this material defect, renders prosecution case doubtful and therefore applicant be released on bail.

4. I have perused the chargesheet. There is sufficient and dependable evidence to suggest and indicate that 54 gms of Mephedrone (commercial quantity) has been recovered from the person of the applicant followed by the panchanama drawn in the presence of two panchas. The seizure panchanama shows, two samples of one gram each i.e. A-1 and A-2 were drawn. These samples were deposited

in the custody, whereafter samples were delivered to the Forensic Science Laboratory. Although, the statement of storekeeper and of the carrier suggest that, he had carried only one sample, however, the stock register extract of Malkhana, clearly shows that, two samples were handed. In consideration of the facts of the case, in my view, no case is made out for granting bail on the grounds urged by the applicant. The Bail Application is rejected.

5. It is made clear that, observations made hereinabove, shall be construed as expression of opinion for the purpose of rejecting bail only and the same shall not, in any way, influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)

NEETA
SHAILESH
SAWANT

Digitally
signed by
NEETA
SHAILESH
SAWANT
Date:
2021.08.13
19:33:28
+0530