

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

BAIL APPLICATION NO.259 OF 2021

Mr. Sanjay Vinayak Medhekar Applicant

Vs.

The State of Maharashtra Respondent

Mr. Niranjan Mundargi i/by Mr. Siddhesh R. Samel for Applicant.
Mr. A.R. Kapadnis, APP for State.
API Awaghade Prakash, ATS Navi Mumbai Unit.

Coram : NITIN W. SAMBRE, J.

Date : 12th OCTOBER, 2021

P.C.:

1. On 12th November, 2019, in Crime No. 08 of 2019, registered with Kalachowki Police Station (Navi Mumbai Unit), for an offence punishable under Sections 8(c), 22 and 29 of N.D.P.S. Act, the applicant was arrested and subsequently charge-sheeted.

2. The prosecution case is, from the custody of accused Nos. 1 to 4, commercial quantity of psychotropic substance came to be

seized, of which during investigation, i.e. from the statement of co-accused, source was noticed to be present applicant. As such, the applicant was also arrested and subjected to custodial interrogation.

3. Place of residence and business of the applicant was searched, so also statements of other persons, who claimed to have remotely connected to the crime named Vaibhav Mhaske and Dattatray More were also recorded.

4. In the aforesaid background, the submissions of learned counsel for the applicant, Mr. Mundargi that, there is hardly any material on record to connect the applicant to the crime in question. So as to substantiate his contentions, he has invited my attention to the charge-sheet viz. recovery from co-accused Abrar Usman Rahatwilkar of the banned substance of about Rs.1,52,000/-. The statements of Dattatray More and Vaibhav so as to claim that the role attributed to the applicant in the crime in question is that of source of procurement of the banned substance. He would further claimed that during investigation nothing could be recovered from the applicant or from his place of residence or place of business.

5 In the aforesaid background, submissions are even if an offence is serious one, the applicant cannot be further detained for want of sufficient evidence as he is falsely implicated.

6. Learned APP while strenuously opposing for grant of bail invited my attention to the statement of co-accused, who has named the applicant as source of contraband material. Similarly the statements of Vaibhav and More are also relied, so as to demonstrate that the applicant, at relevant time, was trading in the banned substances and was also in possession of the same. His further contentions are, the offence is serious one and that being so, the application is liable to be rejected.

7. Considered rival submissions.

8. The contraband substance worth about Rs.1,50,000/- is already seized from co-accused, Abrar. The said Abrar claimed to have stated that the present applicant has provided the contraband material. As such statement of the co-accused recorded during investigation led

to arrest of the applicant. The search on the establishment of the applicant does not yield any result as nothing was seized from the custody of the applicant. The statement of co-accused further led to involvement of one Vaibhav and witness More, who are cited as witness against the applicant. Even if, in the statements of Vaibhav and More, the applicant is alleged to be a person, who was trading in the contraband i.e. banned substance, there is no basis or material on record to support the same but for the aforesaid statements. The allegations against the applicant in the case in hand appears to be based on the statement of co-accused and the statement of other two witnesses, that too without any foundation. The applicant is already behind bar for almost two years. There are no criminal antecedents.

9. Chapter 3 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the “Act” for the sake of brevity) provides for prohibition, control and regulation of psychotropic Substances and narcotic drugs.

Section 8 of the Act prohibits certain operations.

Sub-Section (c) of Section 8 of the Act prohibits manufacture, possession, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act and rules thereunder or orders.

Section 22 of the Act provides for punishment for contravention in relation to psychotropic substances, whereas Section 29 of the Act provides for punishment for abetment and criminal conspiracy.

10. The charge-sheet does not depict any material to prima facie infer that the applicant has made himself prima facie liable for criminal prosecution pursuant to Sub-Section (c). Considering the allegations against the applicant, even the necessary ingredients of Section 29 about abetment and criminal conspiracy are not demonstrated.

11. The statement of the co-accused against the applicant is permitted to be used for pressing out trail qua the involvement of the other accused persons in the crime. Ofcourse the two witnesses Vaibhav and More and co-accused has named the applicant from whom the contraband claimed to be procured.

12. The statement of co-accused in the aforesaid background cannot be considered for ordering further detention of the applicant at this stage, as same has to be restricted for the purpose of investigation only.

13. In the aforesaid background, in my opinion, a case for grant of bail is made out. The application is allowed on following conditions :

ORDER

(i) The applicant be released on bail in Crime No. 08 of 2019, registered with Kalachowki Police Station (Navi Mumbai Unit), for the offence punishable under Sections 8(c), 22 and 29 of N.D.P.S. Act, on

furnishing P.R. bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) with one or more local sureties in the like amount.

(ii) The applicant shall neither influence the prosecution witnesses in any manner nor tamper with the evidence.

(iii) The applicant shall furnish address of his permanent residence and also furnish his latest contact details to the I.O.

(iv) The applicant shall attend the trial regularly.

(v) If there are 2 consecutive defaults in appearing before the trial Court, prosecution will be at liberty to apply for cancellation of Applicant's bail.

(vi) If applicant is found involved in similar type of offence, liberty to move for cancellation of bail.