

PMB

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

CRIMINAL BAIL APPLICATION NO.213 OF 2020

Asif Iqbal Khan @ Chuha .. Applicant

vs.

The State of Maharashtra .. Respondent

Mr. Shrikant Shirsath I/b. Lochan Chandka for the Applicant.

Mr. N.B. Patil, APP for the State.

CORAM : M.S.KARNIK, J.

DATE : SEPTEMBER 29, 2021

P.C.

Heard learned counsel for the parties.

2. The Applicant is seeking bail in connection with C.R. No.37 of 2018 of ANC Bandra Unit. The offence alleged against the Applicant is under Section 8(c) read with Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the said Act' for short). The Special Court under the said Act rejected the application for bail preferred by the Applicant on 06.07.2019.

3. Learned counsel submits that the Applicant was arrested on 23.08.2018. The Police Sub Inspector Pavle along with other Police Officers were on patrolling duty at around 12.30 p.m. near

Usmaniya Dairy Chowk, Gaodevi mountain, Andheri (West). The Police found a person whose actions were suspicious. He had a black coloured bag in his hand and he was waiting for someone. Sub-Inspector Pavle called for the panch witnesses. Thereafter, the Applicant came to be apprehended. The panchanama was carried out. It was found that the bag contained Mephedrone powder which is a banned drug under the said Act. The powder weighed around 58 grams and hence a commercial quantity.

4. Learned counsel for the Applicant submitted that he was arrested only on suspicion. A mandatory procedure for search, seizure and arrest as provided by Sub-Section (4) of Section 100 of the Code of Criminal Procedure has not been followed. Furthermore, the entire procedure is contrary to Section 42 of the said Act. The contention of learned counsel is that the panchas cannot be said to be respectable persons and therefore the entire manner in which the search and seizure is carried out is illegal. Learned counsel submits that Sub-Section (4) of Section 100 of the said Act mandates that it shall be incumbent upon the police to call upon two or more independent and respectable inhabitants of the locality to act as panchas. To support his submission, he relied upon the averments made in his application

about the first panch witness named Mr. Azgar Hussain Sayyad to show that a criminal case is pending against him. So far as the second panch witness named Mr. Kannan Natrajan Shaikh is concerned, counsel submits that even he has the criminal record. The averments are made at grounds 'c' and 'd' of the Application. Learned counsel further submitted that the Applicant is in custody since 23.08.2018 for a period of more than 3 ½ years and therefore deserves to be released on bail.

5. Learned APP opposed the Application and submitted that the Applicant was found in possession of a commercial quantity of banned drug under the said Act and it is only after complying with the mandatory provisions of the said Act that the search, seizure and arrest of the Applicant is effected.

6. Heard. From the record, it is seen that the Applicant was found in possession of 58 grams of Mephedrone. The Chemical Analyser's report also shows that Mephedrone is detected in the exhibit. The quantity allegedly seized from the Applicant is a commercial quantity. The submission that the panch witnesses cannot be said to be respectable persons from the locality and hence the search, seizure and arrest is vitiated is an aspect which cannot be considered at this stage and is a matter of trial.

The record reveals that similar cases have been registered against him and as there are criminal antecedents, I am not inclined to entertain this Application. The Application stands rejected.

7. The trial Court is however requested to expedite the trial considering that the Applicant is in custody for more than 3 ½ years.

8. The Bail Application is disposed of.

(M.S. KARNIK, J.)

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