

BDP-SPS-TAC

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 3041 OF 2021**

Mr. Mohammed Aun Javed Haider SayedApplicant.

V/s

Union of India
Through Intelligence Officer
Narcotics Control Bureau, NCB
Mumbai Zonal Unit, Maharashtra
and Anr.Respondents

Mr. Ali Kaashif Khan Deshmukh for the Applicant.
Mr. Shreeram Shirsat for Respondent No.1/NCB.
Ms. A.A. Takalkar, APP for the Respondent/State.

CORAM: NITIN W. SAMBRE, J.

DATE: NOVEMBER 15, 2021

P.C.:-

1] On 25/1/2021, Applicant came to be arrested and chargesheeted for the offence punishable under Sections 8(c), 22, 27A & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (For short “NDPS Act”) in Crime No. 07 of 2021.

2] Prosecution case against the Applicant is, on secret intelligence

inputs, in on search carried out, following commercial quantity of Heroin and Mephedrone was seized viz. 2,900 grams of Heroin and 52.2 grams of Mephedrone in house search and recovered 10.5 grams of Mephedrone, 52.8 grams of Mephedrone, 5.375 kg. of Mephedrone (MD), 6.126 kg. of Ephedrine, 990 grams of Methamphetamine and also INR Rs 2,18,25,600/-.

3] Submissions of Mr. Deshmukh, learned Counsel for the Applicant are, Applicant is falsely implicated in the crime based on confessional statement recorded under Section 67 of the NDPS Act. According to him, there is no recovery of any narcotic drugs or psychotropic substances from the Applicant and physical presence of the Applicant at the place of co-accused is inferred by the Respondent/NCB adverse to his interest resulting into falsely terming him as an accused. As such, he would urge that since the confessional statement is not binding, in absence of evidence of conspiracy against the Applicant, absence of any recovery from the custody of the Applicant, Applicant is entitled to be released.

4] Mr. Shirsat, learned Counsel appearing for Respondent/NCB

would oppose the prayer on the ground that there is enough material on record to infer Applicant's prima facie involvement in the crime in question.

5] Considered submissions.

6] As far as contention of bindingness of confessional statement of the co-accused recorded under Section 67 is concerned, it is to be noted that said law is settled by the Apex Court in the matter of *Tofan Singh vs. State of Tamil Nadu* in Criminal Appeal No.152 of 2013. It is worth to mention here that such confessional statement can be used in investigation but the prosecution of the accused cannot be based on such confessional statement as is rightly pointed out by the Counsel for the Applicant. However, this Court is required to examine whether prosecution was justified in apprehending the Applicant's involvement in the crime in question. It is claimed by the Counsel for the Applicant that Applicant was a family friend of the main accused and as such was in his company. However, this Court cannot be oblivious to the fact about presence of positive evidence in the form of monetary transaction between the applicant and co-accused as reflected in the

Bank Statement of both the accused. Though Applicant has come out with an explanation that transaction pertains to hand-loan, there is no material on record to infer that Applicant had any loan transaction with the main accused. Apart from above, even if the prosecution has failed to produce 64B Certificate in support of Whats-App chats, that will at the most resulting into disallowing the electronic evidence. However, merely because nothing has been seized from the Applicant will not absolve him of the allegations, particularly having regard to the presence of evidence about conspiracy, recovery of commercial quantity of drugs from the co-accused with whom the Applicant was having close acquaintance and monetary transaction. As far as absence of 64B certificate under evidence act is concerned, said issue can be looked into at the stage of trial.

7] In that view of the matter, no case for grant of bail is made out. Applicant stands rejected.

(NITIN W. SAMBRE, J.)