

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1721 OF 2020

Nasim Banu @ Lali Abdul Gani Shaikh	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Ayaz Khan for applicant.
Mr.A.R.Kapadnis, APP, for State.
Ms.Ashwini R.Kusurkar, API, ANC, Navi Mumbai.

CORAM : PRAKASH D. NAIK, J.

DATE : 31st March 2021

PC :

1. The applicant is arrested on 25th September 2019 in connection with CR No.I-223 of 2019 registered with Turbhe MIDC Police Station for offences under Sections 8(C), 20, 21(B), 29 of NDPS Act.

2. The case of prosecution is that information was received on 25th September 2019 that a lady is likely to sell narcotic drug in front of her house. The information was intimated to Senior Police Inspector and recorded in the information book. Panchas were summoned. The raiding party proceeded for raid. The applicant was apprehended. She was allegedly found in possession of 70 grams of Amphetamine weighing about 70 grams. Search of applicant's premises was conducted, which resulted in recovery of 2 kgs 300 grams of Ganja. On completing investigation charge sheet was filed. Accused nos.2 and 3 were also apprehended on the spot along with applicant and there is recovery of Ganja from them. Accused no.2

was found in possession of 2 kgs 300 grams of Ganja, whereas accused no.3 was found in possession of 1 kg 300 grams of Ganja.

3. The applicant and co-accused had preferred application for bail. The co-accused were granted bail by Special Judge while application of applicant was rejected. It is pertinent to note that amphetamine allegedly recovered at the instance of applicant was a commercial quantity. However, subsequently Chemical Analyser's report was received by investigating agency. The report is placed on record. In the said report it is mentioned that Heroin is detected in sample forwarded for examination. The contention of the applicant is that commercial quantity as stipulated in the schedule of NDPS Act for Heroin is 250 grams. Thus, 70 grams of Heroin would be a non-commercial quantity. Rigours of Section 37 are not attracted. Hence applicant may be released on bail.

4. Learned APP submitted that discretion of grant of bail should not be exercised in favour of applicant. In the past he was involved in two cases. There is recovery of Ganja as well as Heroin in possession of applicant.

5. Learned counsel for applicant pointed out that in the past applicant was prosecuted for two offences. In both the cases applicant was acquitted. He tendered copies of judgments of acquittal. It is pertinent to note that the co-accused who were arrested with applicant and found in possession of Ganja, were granted bail by Special Court. In view of the fact that CA report indicates that the recovered contraband was Heroin weighing 70 grams which is non commercial quantity, the rigours of Section 37 of

NDPS Act would not be attracted in this Case. The applicant is in custody from 25th September 2019. Hence, bail can be granted to the applicant. Hence, I pass following order :

ORDER

- (i) Bail Application is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.223 of 2019 registered with Turbhe MIDC Police Station, Navi Mumbai, on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report Turbhe MIDC Police Station once in three months on first Saturday between 11 am and 1 pm till further orders.

(PRAKASH D. NAIK, J.)

MST