

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

936 BAIL APPLICATION NO.502 OF 2022

Shaikh Nayyar S/o Shaikh Naim

..Applicant

VERSUS

The State of Maharashtra

..Respondent

Advocate for Applicant : Mr. Rameez M. Shaikh
APP for Respondent : Mr.S.B.Narwade

CORAM : SMT. VIBHA KANKANWADI, J.

DATE: 4th May, 2022

ORDER :-

1. Present applicant came to be arrested on 24th November, 2021 in connection with Crime No.0463 of 2021, registered with Begampura Police Station, District Aurangabad, for the offence punishable under Sections 328, 276 read with Section 34 of the Indian Penal Code (IPC), under Section 22(B) of the Narcotics Drugs and Psychotropic Substances (NDPS) Act and under Section 18(C), 27 of the Drugs and Cosmetics Act. This application is filed under Section 439 of the Code of Criminal Procedure.

2. Heard Mr.R.M.Shaikh, learned Advocate for the applicant and Mr.S.B.Narwade, learned APP for the respondent.

3. The learned Advocate appearing for the applicant submits that the applicant was not present when the alleged raid was conducted in which his family members have been arrested and the alleged contraband / narcotic drug has been seized. It has been stated that the co-accused i.e. parents of the applicant had disclosed the name of the present applicant as the person who had supplied them those narcotic drugs and after the arrest, it is stated that the applicant disclosed the names of few more accused, who also came to be arrested. The parents of the applicant and those persons, who had allegedly supplied the drugs to the present applicant, have been released on regular bail. Charge-sheet is also filed and therefore, physical custody of the applicant is not required. The applicant is ready to abide by terms of the bail.

4. The learned APP for the respondent strongly opposed the application and submitted that the applicant's parents were found possessing the contraband / narcotic drugs. The Chemical Analyzer (CA) report confirms that they are the narcotic drugs. The family members of the applicant are saying that those tablets of the narcotic drugs were supplied by the present applicant. Then, as against the applicant, it is a commercial quantity, though for those individual persons from whom

different number of tablets alleged to have been seized, might have been considered by this Court as small quantity while releasing them on bail on 13th January, 2022. The applicant had supplied all those tablets. Further, the applicant has criminal antecedents. Four offences have been registered against him with Kranti Chowk Police Station, one with Mukundwadi Police Station, Chhawani Police Station and Begampura Police Station respectively. Most of them are offences against body. If the applicant is released on bail, possibility of either similar kind of offence or more serious offence at the hands of the present applicant cannot be ruled out and therefore, application be rejected.

5. Perusal of the FIR would show that it has been lodged by Vinod Prabhakar Bhalerao (Police Sub-Inspector) of Begampura Police Station and it appears that from four accused persons in all 190 number of tablets were found. All of them had stated that the present applicant had supplied them those tablets. The name of the present applicant is reflected as accused No.5 in the FIR. The FIR further states that when the raid was conducted co-accused - Shaikh Nadeem, who is the brother of the present applicant and has been posed as accused No.4, was also not present and when enquiry was made with the accused persons,

who were found possessing the narcotic drugs, they told that those tablets were supplied to them by Shaikh Nadeem and present applicant. It is stated that Shaikh Nadeem has been released on bail. Therefore, if we consider the contents of the FIR, present applicant is similarly situate with Shaikh Nadeem and therefore, ground of parity is available to the present applicant.

6. The Panchanama or the FIR does not say about the weight of the tablets in grams. As per Table of the Schedule appended to NDPS Act, the quantity has to be given in grams or kilograms as the case may be. Therefore, whether those individual persons from whom the number of tablets were seized can be said to be possessing a small quantity of narcotic drug is a question, but then it appears that when this Court had granted bail to Shaikh Mobin Shaikh Rafiq, Farid Qureshi Baba Qureshi, Shaikh Aslam Shaikh Mushir and Shaikh Najib Shaikh Rafiq, it was considered as small quantity. No doubt, the CA report states that the sample is the narcotic drug, but admittedly present applicant was not present when the raid was conducted. Except the statement of the co-accused that the applicant had supplied those tablets, there is nothing against the present applicant. It is then stated that the present applicant, after his arrest, had made disclosure

from whom he had brought those tablets and those persons were also arrested from whom also certain tablets have been seized. However, the applicant cannot be said in that event also, possessor of the narcotic drugs. How far the statement made by the present applicant is admissible is a question and it will have to be decided by the Special Judge under the NDPS Act.

7. The cases in which the applicant appears to be an accused are under Sections 324, 394, 326 of the IPC, however, the present status of these cases has not been given. That cannot be a hurdle for releasing him on bail.

8. As regards Section 328 of the IPC is concerned, this Court in order dated 13th January, 2022, has observed that there has to be some evidence to indicate that the applicants had administered or caused to be taken by any person and there are no such allegations in the FIR indicating thereby that the ingredients of Section 328 of the IPC are not attracted in this case. Therefore, in view of the evidence that has been collected and the charge-sheet has been filed, the applicant need not be asked to languish in jail as it will take long time for his trial to stand. Hence, the following order :-

ORDER

- i) Bail Application stands allowed.
- ii) The Applicant - Shaikh Nayyar Shaikh Naim be released on bail in connection with Crime No.0463 of 2021, registered with Begampura Police Station, Dist.Aurangabad, for the offence punishable under Sections 328, 276 read with Section 34 of the IPC, under Section 22(B) of the NDPS Act and under Section 18(C), 27 of the Drugs and Cosmetics Act, on P.R.Bond of Rs.50,000/- (Rs. Fifty Thousand only) with two solvent sureties of Rs.25,000/- (Rs. Twenty-five Thousand only) each.
- iii) The applicant shall comply with the requirements set out in Para No.12(1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.
- iv) The applicant shall not indulge in any criminal activity.
- v) The applicant shall tamper with the prosecution evidence in any manner.
- vi) Failure on part of the applicant to abide the terms of bail would give opportunity to the prosecution to file application under Section 439 (2) of the Code of Criminal Procedure.
- vii) Bail before the trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE