

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

BAIL APPLICATION NO. 213 OF 2022

Shoaib Noor Mohammad Qureshi

.... Applicant

v/s.

The State of Maharashtra

.... Respondent

Mr. Kamlesh M. Satre with Mr. Atul Sarpande
with Mr. Vikas Chavan for the Applicant.

Mr. M.G. Patil, APP for the State.

Mr. Ashutosh Chavan, PSI, Nayanagar Police Station.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 25th MARCH, 2022.

P. C. :-

. This is an Application under section 439 of Cr.PC. filed by the aforesaid Applicant who is facing trial in Special Case No.741/2021 pending on the file of Special Judge, (NDPS), Thane for offences punishable under sections 8(c) r/w. 20, 22 and 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The case of the prosecution is that on 15/05/2021, while Mr. Pravin D. Pawar, Police Naik was on patrolling duty, he received information that three persons were likely to come to the spot for selling mephedrone. Accordingly, he went to the spot of the incident

and formed a team. They found one Honda Activa scooter coming to the spot. They saw three unknown persons moving around in a suspicious manner. They were apprehended and upon inquiry, they disclosed their names. PI Salunkhe informed the accused of their rights under section 50 of N.D.P.S. Act and after taking thorough search, 50 gms of MD was recovered from the Accused No.1, 10 gms of MD from Accused No.2 and 5 gms of MD from Accused No.3. Accused No.4 was subsequently placed under arrest and 120 gms of MD was recovered from the possession of accused no.4. The crime has been investigated and charge sheet has been filed against the Applicant and the other co-accused.

3. Learned counsel for the Applicant states that the Applicant is in custody since last more than 10 months. He states that the Applicant was allegedly in possession of non commercial quantity. He further claims that there was no proper compliance of mandatory provisions of sections 42 and 50 of NDPS Act. He submits that the Applicant has no criminal antecedents and that his presence is not required in custody pending trial.

4. Learned APP states that the Applicant was found in possession of

10 gms of MD, the other two accused were in possession of 50 gms of MD and 01 gm MD respectively. The total quantity of MD recovered from the Applicants exceeds 50 mg which is a commercial quantity. He further states that there is compliance of mandatory provisions of section 50 of NDPS Act and that considering the nature of the accusations, the Applicant is not entitled for bail.

5. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

6. The records prima facie indicates that the Applicant was arrested on 16/05/2021 and that upon personal search, he was allegedly found in possession of 10 gms of MD. The records prima facie indicates that the accused no.1 was found in possession of 50 gms of MD and the accused no.4 was found in possession of 120 gms of MD. The quantity of contraband substance found in possession of the Applicant was below commercial quantity. The question whether the quantity of contraband substance found in possession of the other co-accused can be taken into consideration for attracting bar of Section 29 of NDPS Act has been decided by this Court in *Sangeeta Y. Gaikwad v/s. State of Maharashtra in Criminal Application No.2597 of 2006*. This Court

upon considering the decision of the Apex Court in *(2005 All.M.R. (Cri.) 229 (S.C.))* has held that where two accused persons were found together heroine more than the commercial quantity but individually less than the commercial quantity, section 29 would not be attracted, unless in a given case, there is an independent evidence of conspiracy. In the instant case, prima facie, there is no independent evidence of such conspiracy and hence, rigors of section 29 would not be applicable to the facts of the case.

7. The records also prima facie indicate that the Applicant was informed that he has a right to be searched by a Magistrate. He was not informed that he can opt for search before a Gazetted Officer. Be that as it may, the Applicant is found to be in possession of non commercial quantity of contraband substance. He is in custody since last 10 months. It is stated that till date, no charge has been framed. Considering the large pendency of cases, there is no possibility of the trial being concluded in immediate future. Furthermore, it is also stated that the Applicant has no criminal antecedents. The Applicant is a permanent resident of the State. Hence, there are no chances of the Applicant absconding and/or thwarting the course of justice.

8. Considering the above facts and circumstances, the Applicant is entitled for bail. Hence, the Bail Application is allowed on following terms and conditions :-

- (i) The Applicant who is facing trial in Special Case No.741/2021 pending on the file of Special Judge, (NDPS), Thane, is ordered to be released on bail on furnishing PR bonds in the sum of Rs. 50,000/- (Rupees Fifty Thousand Only) with one or two solvent sureties in the like amount.
- (ii) The Applicant shall report to Nayanagar Police Station once in a month on every 1st Saturday between 11.00 a.m. to 02.00 p.m. until further orders;
- (iii) The Applicant shall not interfere with the complainant and/or tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case, in any manner ;
- (iv) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.

- (v) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

9. Bail Application stands disposed of in above terms.

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JAYANI

(SMT. ANUJA PRABHUDESSAI, J.)

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