

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.369 OF 2022

Samir Abdul Jabbar Shaikh

...Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.Mithilesh Mishra a/w Mr.Naushad Jamdar i/b Mr.Gopal
Bhosale for the Applicant.

Mr.R.M. Pethe,APP for the Respondent-State.

CORAM : C.V. BHADANG, J.

DATE : 16 FEBRUARY 2022

P.C.

. The Applicant, apprehending arrest, in connection with the investigation of Crime No.386 of 2021 registered with Sinhagad Police Station, Pune City under Section 8(c) and 22(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS' Act) is seeking anticipatory bail.

2. According to the prosecution, during the course of a regular patrolling the police stumbled upon a recovery of 20 grams of mephedrone from a vehicle in respect of which the driver of the vehicle and one other occupant, were arrested after compliance of Section 50 of the said Act.

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3. According to the prosecution, during the course of interrogation of the co-accused, it was revealed that the contraband was procured from the present Applicant. In short according to the prosecution the Applicant is regular dealer and supplier of the contraband.

4. I have heard the learned counsel for the parties. Perused record.

5. The learned counsel for the Applicant has submitted that there is no recovery of the contraband from the present Applicant. It is submitted that the quantity recovered is a intermediate quantity and the Applicant cannot be arrested under the stringent provisions of the Act without any material showing the involvement of the Applicant in the said offence.

6. The learned counsel has placed reliance on the decision of the Supreme Court in the case of ***Seesh Singh @ Mor V/s. State of Punjab***¹, in order to submit that in similar circumstances the Supreme Court had granted pre arrest bail to the accused. It is submitted that there are no criminal antecedents to the discredit of the Applicant.

7. The learned Additional Public Prosecutor has submitted that there are entries in the bank account of the

1 **Criminal Appeal Nos.822 of 2020 decided on 02 December 2020.**

Applicant showing that he had received certain amount from the Accused No.1 and there are also CDR record showing that the Applicant was in contact with the Accused No.1. He therefore, submitted that the further investigation in the matter is necessary for which the custodial interrogation of the Applicant is required.

8. I have considered the submissions made. *Prima facie* it appears that there is no recovery of the contraband from the Applicant. Even the contraband said to be recovered from the co-accused is of intermediate quantity and therefore admittedly the rigours of Section 37 of the said Act are not applicable. There are no criminal antecedents to the discredit of the Applicant.

9. In my considered view, merely on the basis of the some bank entries and the other record the Applicant cannot be refused to pre arrest bail. In my considered view, the Applicant can be directed to join the investigation, with liberty to the prosecution to apply for cancellation or modification, in the event, there is any further material collected during the course of the investigation and showing the involvement of the Applicant.

10. In the result, the following order is passed.

ORDER

(i) In the event of his arrest, in connection with investigation of Crime No.386 of 2021 registered

with Sinhagad Police Station, Pune City, the applicant shall be released on bail on executing a P.R. Bond in the sum of Rs.25,000/-with one or two solvent sureties in the like amount.

(ii) The Applicant shall report to the Investigating Officer on 21 and 22 February 2022 between 11.00 a.m. to 1.00 p.m. and shall co-operate with the Investigating Agency.

(iii) The applicant shall not tamper with the prosecution evidence/witnesses.

(iv) Liberty to the prosecution to apply for modification in the event any further material is disclosed during the course of the investigation.

C.V. BHADANG, J.