

Diksha Rane

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

BAIL APPLICATION NO.610 OF 2022

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SAMIR SALIM KHAN S/O. SALIM KHAN ..APPLICANT

VS.

UNION OF INDIA & ANR. ..RESPONDENTS

Adv. Advait Tamhankar a/w. Adv. Ashwini Achari and Adv.
Taraq Sayed i/b. Adv. Bhumika Gada for the applicant.

Mr. N. B. Patil, APP for State.

Adv. Shreeram Shirsat a/w. Adv. Amandeep Singh S. a/w.
Adv. Nishi Singhvi for the respondent-NCB.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 7, 2022.

P.C. :

1. Heard learned counsel for the applicant, learned
counsel for the respondent-Narcotics Control Bureau (NCB)
and learned APP for the State.

2. This is an application for bail in connection with NCB
Crime No.54/2021 registered with NCB, Mumbai Zonal Unit
for the offence punishable under Sections 8(c) read with
22(c), 27-A, 28 and 29 of the Narcotic Drugs and
Psychotropic Substances Act, 1985 (hereafter 'the NDPS
Act' for short).

3. The co-accused Samir Latif Shaikh (original accused no.1) was found in possession of 52 gms of contraband Mephedrone (MD). The said Samir Latif Shaikh (original accused no.1) was arrested on June 11, 2021. On the basis of his statement that was recorded, the officials of the department proceeded to search the person of the applicant as well as his premises. According to the accused no.1, the applicant was the main supplier. The applicant was searched after following the prescribed procedure. Nothing was found on his person. Upon searching the residential premises of the applicant, the officials of the department found that in a plastic bag there was 160 gm white coloured powder which they suspected to be MD drug. The quantity which was found, was a commercial quantity. Even from the accused no.1 Samir Latif Shaikh, what was found in his possession was a commercial quantity. The applicant was alleged to have committed the offence punishable under Sections 8(c) read with 22(c), 27-A, 28 and 29 of the NDPS Act.

4. Learned counsel Mr. Shreeram Shirsat appearing on behalf of the respondent-NCB submitted that in view of the

application of Section 29 of the NDPS Act, as a commercial quantity is found from the possession of the accused no.1, who in turn stated that the present applicant is the main supplier, this is not a case where this Court should record the satisfaction under Section 37 of the NDPS Act that the applicant is not guilty of the offence.

5. It is well settled that merely because the applicant is not found in possession of the substance, is not by itself a ground to record a satisfaction that the applicant is not guilty of the offence, as the Court has also to take into consideration other materials which are appearing against him.

6. In the present case, the applicant was found in possession of white coloured substance which the department believed to be drugs. The chemical analysis report, however, indicates that the said powder which is found from the possession of the applicant is not covered as a narcotic or psychotropic substance under the NDPS Act.

7. The accused no.1, no doubt, stated in his statement that there were previous transactions, monetary, as well as

delivery of the substance from the applicant to the accused no.1.

8. In the present case, except for the statement of the co-accused that the applicant was the main supplier, there is absolutely no material on record to indicate that the applicant was in any way associated with the accused no.1 or anything to demonstrate that there were some monetary transactions between them. Even the call detail records are not available to establish that they were in contact with each other.

9. The white powder which was found at the residence of the applicant, believed to be narcotics/drugs, during chemical analysis was not found to be a drug or a substance covered by the provisions of the NDPS Act. No antecedents as against the applicant are reported so as to form an opinion that the applicant will commit the same offence in future as well.

10. In my opinion, the facts and circumstances of this case, for satisfying the condition of Section 37, persuade me to believe that the applicant has not committed the

offence. Furthermore, as observed earlier, I am satisfied that there is nothing to indicate that the applicant may commit any offence while on bail.

11. The decision of the Supreme Court in the case of **Narcotics Control Bureau vs. Mohit Aggarwal**¹ relied upon by learned counsel Mr. Shirsat, is distinguishable on facts. Before the Supreme Court, the respondent no.1 disclosed that he had been illegally selling and purchasing the Tramadol tablets and capsules from one Promod Jaipuria. The huge quantities of narcotic drugs and injections were seized from the godown of the co-accused Promod, who was subsequently arrested by the department. It was on the basis of the disclosures made by the respondent that the narcotic drugs and injections were seized from the co-accused Promod. It is in these facts the Supreme Court held that the satisfaction that the accused is not guilty of the offence, could not be recorded.

12. The applicant is in custody for more than 1 year and 5 months. Merely because he is in custody for this long a period is no ground to release him on bail unless the

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conditions of Section 37 are satisfied. I have already held that the conditions of Section 37 are satisfied. Therefore, I consider the duration of the applicant's custody as an additional circumstance. There is no likelihood of the trial commencing any time soon. Needless to mention that these are *prima facie* observations in nature and the trial Court will proceed with the trial independently on its own merits, without being influenced by any observation made in this order. Hence the following order.

: ORDER :

- (a) Application is allowed.
- (b) Applicant-Samir Salim Khan s/o. Salim Khan shall be released on bail in connection with NCB Crime No.54/2021 registered with NCB, Mumbai Zonal Unit on furnishing P.R. Bond of Rs.50,000/- with one or two sureties in the like amount.
- (c) The applicant shall mark his attendance before the concerned police station twice in a month on the 1st and 15th day of each month.
- (d) The applicant shall not directly or indirectly make

any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(f) The applicant shall not leave the jurisdiction of Mumbai/Mumbai Suburban District without permission of the trial Court.

13. The application is disposed of.

(M. S. KARNIK, J.)