

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

CRIMINAL BAIL APPLICATION NO.1107 OF 2021

Juvel Abdul Mandal Applicant

versus

State of Maharashtra Respondent

.....

- Ms.Ashwini Achari i/b. Taraq Sayed, Advocate for Applicant.
- Mr.Ajay Patil, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 21st JANUARY 2022
(through video conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.111/2020, dated 03/03/2020, registered with Vashi Police Station, Navi Mumbai, under sections 8(c), 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), under sections 420, 465, 467, 468, 471 r/w 34 of the Indian Penal Code, under sections 3 and 6 of the Passport (Entry into India) Rules, 1950 and under section 14 (A) of the Foreigners Act, 1946.

2. Heard Ms.Ashwini Achari, learned counsel for the Applicant and Mr.Ajay Patil, learned APP for the State.
3. The FIR is lodged by police constable Rajendra Patil on 03/03/2020. He has stated that on 02/03/2020 he joined his duty with Thane Crime Detection Squad. Their officers received a secret information that two Bangladeshi persons were to come near Vashi Gaon bridge for selling substance known as 'Yaba' Drugs. The police party completed the requirement of section 42 of the NDPS Act, called two panchas, made preparation to conduct raid. The police party went to the spot. At about 09.30 p.m. two persons mentioned in the information came at the spot. They were stopped. They were apprised regarding their right to be searched in the presence of a gazetted officer. The search was conducted and it was found that one of the persons, named Moklesur Rahman @ Johny Vishwas was carrying 160 tablets weighing 15.768 gms. The other accused Hilal Sabuddin Matiur Raheman was carrying 50 tablets weighing 4.937 gms. The tablets were of the psychotropic substance known as 'Methamphetamine'. On this basis the FIR is lodged.

4. During the investigation one of the accused gave statement that the present Applicant was connected with this and was selling similar drugs. His statement under section 27 of the Evidence Act was recorded on 11/03/2020. That statement was given by the accused Johnny. Pursuant to that statement, the raiding party went to the house of the present Applicant on 11/03/2020 at about 06.30 a.m. The Applicant was found in his house. He was apprised of his right for search by a gazetted officer. He declined. His search was carried out and it was found that he was having 114 tablets weighing 11.003 gms of Methamphetamine. The samples were drawn. The chemical analysis report also confirmed that it was Methamphetamine.

5. Learned counsel for the Applicant submitted that the search in the Applicant's house was conducted before sunrise and therefore there is clear violation of section 42 of NDPS Act. She also submitted that there is violation of section 50 of NDPS Act because one of the raiding party members was a gazetted

officer and that is not permissible. She submitted that the Applicant is an Indian citizen. The other offences are not attracted against him.

6. Learned APP submitted that there is no violation of any mandatory provisions. Section 50 was duly complied with. The raid was conducted during course of investigation and therefore there is no violation of section 42.

7. I have considered these submissions. It is not necessary to go into the details of the submissions in respect of violation of the mandatory provisions in this case at this stage. It is best left for the trial Court to decide this issue in the circumstances of this case. It is sufficient to note that the quantity which was recovered from the application is bigger than the small quantity, but lesser than commercial quantity. Even if the contraband seized from the other accused is also added to the total seizure, even then the total seizure does not go beyond the commercial quantity of 50 gms. as given in the NDPS Act for

Methamphetamine. Therefore bar of section 37 of NDPS Act will not apply against the Applicant, because the offence does not involve commercial quantity. The Applicant does not have criminal antecedents. There is scope to believe that he is not likely to commit offence while on bail. In this view of the matter, the Applicant can be released on bail.

8. Hence, the following order :

ORDER

- (i) In connection with C.R.No.111/2020, dated 03/03/2020, registered with Vashi Police Station, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two local sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)