

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1686 OF 2021

Khalikul Jama Khan @ Khalli @ KK @ .. Applicant
Khalli Bhai

Versus

The State of Maharashtra .. Respondent

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Mr.Ayaz Khan for the applicant.
Mrs.Rutuja Ambekar, APP for the State.
PN No.03587 Shri Sawant present.

CORAM: BHARATI DANGRE, J.
DATED : 23rd SEPTEMBER, 2022

P.C:-

1 On receipt of information, a raid was conducted on 15/7/2020 and the panchnama which is compiled in the charge-sheet on page 46 of the paper book dated 15/7/2020 record the happenings of the events, which resulted in recovery of the contraband and the subsequent registration of the FIR.

 The panchnama would reveal that as per the information received, two persons were found seated on a motorcycle at 15.45 hours. The informer pointed out to the said persons and confirmed that these are the two persons in respect of whom the information has been received. They were sitting on the vehicle and chit-chatting. At that time, one third person came

there and since the movements of the trio appeared to be suspicious and when the informer also confirmed that the persons are the same in respect of whom information is received, the ATS team, on receiving signal, attempted to apprehend them. Some scuffle occurred and one of the suspect fled away and was chased by a part of the team members. The two other persons along with the motorcycle came to be apprehended at 15.55 hours.

2 The panchnama further record that the person apprehended, disclosed his name as Irshad and the name who ran away was given as Khalikul Jama Khan (present applicant)

On following the procedure prescribed u/s.50 of the NDPS Act, a substance in form of white colour powder was recovered from them, which weighed 1 kilo 575 gms. Pertinent to note that there was no testing kit which tested the substance. The procedure was followed and the samples were drawn and the remaining substance was sealed and taken into possession.

The prosecution alleged is that the seized substance is mephedrone.

3 The panchnama reveal that out of the three persons, one person fled away and it is stated that the applicant is the said person. The applicant came to be arrested on 23/7/2020, and when the learned APP is asked, as to what is the basis on which he is arraigned as accused and he is arrested, she would rely upon the statement of the co-accused. However, even after arrest, the

applicant was never subjected to Test Identification Parade as it is very necessary to establish the charge levelled against him, that he was one of the person who was present and thereby, he was a part of the conspiracy where the drugs were brought by the accused persons for being sold.

In absence of the identification parade, the prosecution prima facie has failed to establish with certainty that the applicant is the third person who was present on the spot and who fled away. Apart from this, in the charge-sheet, no recovery is attributed to him subsequent to his arrest.

4 The learned counsel Mr.Khan is perfectly justified in submitting that he cannot be accused under Section 8(c) r/w Section 22 of NDPS Act, and at the most, he may be charged u/s.29 which prescribe punishment for abetment and criminal conspiracy. For the purpose of attributing abetment and conspiracy, when the attempt is made to search for the material in the charge-sheet, except the accusation that the applicant was found on the spot and fled away, when the ATS team arrived, the material is conspicuously absent. In the absence of the Test Identification Parade, the prosecution has failed to prove that it is the arrested person i.e. the applicant, who was part of the trio, who were present with drugs, when he fled away from the spot. Since the charge-sheet do not contain cogent and relevant material to implicate the present applicant as an accused, the applicant deserve his release on bail.

When asked whether the applicant has any antecedents of dealing in drugs, the learned APP respond in the negative. In absence of any flight risk being expressed, the applicant is released on bail.

Observations made above are prima facie in nature and limited for the purpose of adjudication of the present applicant, and shall in no way, bind the Sessions Judge while he is trying the applicant for the offence with which he is charged.

Hence, the following order :-

ORDER

(a) The Applicant - Khalikul Jama Khan @ Khalli @ KK @ Khalli Bhai in connection with C.R.No. 2 of 2020 registered with ATS Juhu Unit, shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

(b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.

(c) The Applicant shall mark his attendance on first Saturday of every trimester between 3.00 p.m to 5.00 pm and attend the trial on regular basis.

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

The Application is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)