

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

CRIMINAL BAIL APPLICATION NO.1687 OF 2021

Sahir Ali Jalil Shaikh Applicant

Versus

The State of Maharashtra Respondent

Ms. Tahera Qureshi, for the Applicant.

Smt. Rutuja Ambekar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 22nd FEBRUARY, 2022

P.C. :

1. The Applicant is seeking his release on bail in connection with CR No.336 of 2020 registered at Nerul Police Station, Navi Mumbai, dated 3rd December, 2020 under Sections 8(c), 22(B) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “the NDPS Act”).

2. Heard Ms. Tahera Qureshi, learned counsel for the Applicant and Smt. Rutuja Ambekar, learned APP for the Respondent – State.

3. The FIR is lodged by the police constable Kasam Dastagir Pirjade. He stated that he was working in Crime Branch, Navi Mumbai in Anti Narcotics Cell Branch. On 3rd December, 2020, at about 11.10

am, he had received the secrete information about two persons who were about to come near an automobile shop in Sector No.1 in Navi Mumbai. The description of those persons was given. The information was that they were planning to sell heroin. The Informant told about this information to his senior. The information was taken down in writing and the arrangement was made to conduct the raid. The panchas were called. The copy of the information was sent to senior officer. At about 12.10 pm, the panchas came to the police station. The raiding party went to the spot at 1.45 pm. At about 3.00 pm, two persons came to the spot. Those two persons were apprehended at 3.15 pm. They were informed about their rights under Section 50 of the NDPS Act. When they gave their no objections, their personal search was carried out. The Applicant was found carrying 80 gram heroin in plastic bag which was tested on the testing kit and the raiding party was satisfied that it was heroin. The sample of 2 gram was removed and sent for analysis. The Applicant's companion Rajesh Mundu Miya was found carrying 60 gram of heroin. He was also arrested. On this basis, the FIR was lodged.

4. Learned counsel for the Applicant submitted that the Applicant does not have any antecedents. She submitted that the

quantity found with the Applicant was less than the commercial quantity. She submitted that even if the quantity of heroin recovered from the co-accused was considered together; it was lesser than the commercial quantity and the entire seized quantity was lesser than the commercial quantity. She submitted that there is no criminal antecedent to the Applicant's discredit. The Applicant was arrested on 3rd December, 2020. The investigation is over, therefore, he may be released on bail. There is no impediment under Section 37 of the NDPS Act to grant bail.

5. Learned APP opposed this Application. She submitted that all mandatory provisions of the NDPS Act are complied with. On merits there is a strong case against the present Applicant.

6. I have considered these submissions. Learned APP's contentions that all mandatory provisions are complied with, can be accepted at this stage but that issue can be finally decided during the trial when the evidence is led. However, at this stage, the submission of the learned counsel for the Applicant also will have to be accepted that the bar under Section 37 of the NDPS Act does not apply against the present Applicant. It is also important to note that the learned APP on instructions has stated that the Applicant does not have any criminal antecedents. Therefore, the required satisfaction under section 37 of

the NDPS Act, can safely be recorded. There are reasonable grounds to believe that, the Applicant has not committed any offence involving commercial quantity and that if he is released on bail, he is not likely to commit any such offence because he does not have criminal antecedents against him. Therefore, there is no impediment in granting bail to the Applicant. The Applicant is arrested on 3rd December, 2020. The investigation is over and the charge-sheet is filed. The Applicant's further custody for investigation purpose is not necessary. The trial is not likely to commence soon. Therefore, he deserves to be released on bail.

7. Hence the following order:

ORDER

- (i) In connection with CR No.336 of 2020 registered at Nerul Police Station, Navi Mumbai, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two Local sureties in the like amount.
- (ii) The Applicant shall attend the concerned police station once every fortnight for a period of one year and shall co-operate with investigation.
- (iii) The Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)