

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1781 OF 2022

Afzal Hussain Mumtaz Ali Ansari .. Applicant
Versus
The State of Maharashtra .. Respondent
...

Mr. Ayaz Khan for the applicant.
Mr.S.V.Gavand, APP for the State.
PSI Shri B.V. Gaonkar from Amboli police station.

CORAM: BHARATI DANGRE, J.
DATED : 10th OCTOBER, 2022

P.C:-

1 Heard Mr.Ayaz Khan, learned counsel for the applicant and Mr.S.V. Gavand, learned APP for the State.

2 The applicant face charge u/s.8-C, 22, 29 of NDPS Act and he came to be arrested on 13/1/2019. On completion of investigation, case is registered as NDPS Special Case No.103/2019.

 The case of the prosecution from the charge-sheet is to the effect that on the information being received, a raid was organized and the accused no.1 riding a motorcycle with the applicant being a pillion rider, arrived at the spot. Since secret

information received was, he was carrying Mephedrone, a personal search was carried out by apprising them of their right under Section 50 of the NDPS Act. The panchnama itself reveal that accused no.1 Abdul was carrying a sack and on its seizure, the contraband was seized which was packed in a silver colour foil. On weighing, it was found to be 1(one) kg with an approximate value of Rs.40 lakhs. Samples were drawn from the said powder and the panchnama which began at 13.25 hrs on the spot was concluded in the police station at 17.10 hours, the applicant being shown to be arrested at 16.50 hours.

3 The learned counsel Mr.Khan is perfectly justified in submitting that there is no seizure of contraband from the applicant (Accused no.2) and it is very apparent from the panchnama. When the learned APP is asked to show any material in the charge-sheet to establish that the applicant was aware of the person riding a motorcycle, being in possession of the contraband and whether, he could be attributed of such a knowledge, Mr.Gavand fairly state that there is no such material to that effect in the charge-sheet. There are no CDRs to establish the relationship between accused nos.1 and 2 and the possibility of two persons travelling together on the same bike, can be as many in number, as one can think, being unconnected to one another.

4 Reliance is placed upon *Narcotics Control Bureau, Jodhpur Vs. Murlidhar Soni and ors, 2004 Drugs Cases*

(*Narcotics*) 182, where on conclusion of the trial, when the sack was carried by the father who was travelling along with the son and since no material was brought on record to demonstrate that the respondent had the knowledge about the contents of the bag, his acquittal was upheld and the Appeal filed by the NCB was dismissed.

5 In the wake of the aforesaid factual and legal scenario emerging in the present case, the applicant deserve his release on bail since the prosecution has not even invited my attention to any antecedents. Hence the following order.

ORDER

- (a) The Applicant – Afzal Hussain Mumtaz Ali Ansari in connection with C.R.No.4/2019 registered with Amboli Police Station 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 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.)