

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3018 OF 2021

Farida Nasim Shaikh @ Aapa .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Dilip Mishra i/b Mr.Ayaz Khan for the Applicant.

Mr.S.H.Yadav, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.

DATED : 02nd AUGUST, 2022

P.C:-

1. The applicant is facing charge under Section 8(C) read with Section 22(C) of the NDPS Act and she is arrested on 28/01/2021, on the basis of the disclosure statement made by accused No.1.

On completion of investigation, the charge-sheet has been filed and the applicant continue to remain incarcerated, pending the trial.

2. On 21/12/2020, the officers of the Local Crime Branch, Thane noticed two suspicious persons in the Innova car and on

search of the car alongwith it's occupants, being accused Nos.1 and 2, 1 kg. 70 gm of Heroin and 1 kg. 700 gm. Mephedrone came to be recovered. The samples and bulk quantity came to be packed, sealed and seized by drawing a panchnama and it led to registration of the subject C.R.

3. At the instance of accused No.1, who is in custody, memorandum panchnama was drawn on 24/12/2020, which led to the seizure of 135 gm of Mephedrone and 8 kg. of Khat leaves. It is on the basis of this Memorandum under Section 27, where accused No.1 has disclosed that he used to procure the drugs from a lady known as 'Aapa' and who is named as Farida Nasim Shaikh (present applicant), the applicant came to be apprehended and is facing the trial.

4. Learned A.P.P. admits that except this statement, there is no material in the charge-sheet against the present applicant to connect her to the act of recovery of drugs from accused Nos.1 and 2 and at the instance of accused No.1.

5. The legal position on the memorandum panchnama drawn under Section 27 of the Indian Evidence Act, is well settled and the four conditions, which are necessary for the applicability of Section 27 of the Act, being (1) discovery of fact in consequence of an information received from accused;

(2) discovery of such fact to be deposed to; (3) the accused must be in police custody when he gave information; and (4) so much of information as relates distinctly to the fact thereby discovered is admissible.

In ***Mohmed Inayatullah vs The State of Maharashtra***¹, it has been held that panchnama/panchnama under Section 27 must comply with two conditions, the first one being information must be such as has caused discovery of the fact and secondly, information must relate distinctly to the fact discovered.

Recently, the Hon'ble Apex Court in the case of ***Shahaja @ Shahajan Ismail Mohd. Shaikh Vs. State of Maharashtra***², has reiterated the scope and ambit of Section 27 by placing reliance on the locus classicus, ***Phulukuri Kottaya Vs. Emperor***³ and the observations, which are relevant are quoted as below :-

"It is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information supplied by a person in custody that 'I will produce a knife concealed in

1 AIR 1976 SC 483

2 2022 LiveLaw (SC) 596

3 AIR (1947) PC 67

the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed 'A" these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

6. Accused No.1 led to discovery of some substance, but there is no recovery at the instance of the applicant and the statement made in the memorandum panchanama that he buy and sell drug to her, but without a statement that this particular drug, which was discovered, is brought from the present applicant, *prima facie*, the said statement in the memorandum, cannot be made admissible in evidence.

7. Learned A.P.P. placed reliance upon the antecedents of the applicant, but Mr.Mishra, learned counsel for the applicant, responds by stating that in N.D.P.S. Special Case No.86 of 2018 arising out of C.R.No.206 of 2017, registered with Ghatkopar Police Station, she has been discharged. Further in N.D.P.S. Special Case No.50 of 2017 also, she is discharged and in C.R.No.23 of 2017, where she is accused of offences punishable under Section 8(c) read with Sections 20

and 29 of the NDPS Act, she has been released on bail. It is submitted by Mr.Mishra that there is no recovery at the instance of the applicant in the said C.R.

He has also placed on record the orders discharging the applicant in the two CRs and another order releasing her on bail.

8. In the wake of the above, since *prima facie*, there is no material which connect the applicant to the recovery of the contraband at the instance of accused Nos.1 and 2 and when there is no recovery at her instance, she deserves her release on bail. Hence, the following order.

: ORDER :

- (a) Application is allowed.
- (b) Applicant -Farida Nasim Shaikh @ Aapa shall be released on bail in connection with C.R.No.354 of 2020 registered at Padgha Police Station on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) 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.

(d) The Applicant shall attend the concerned police station on every Saturday between 10.00 a.m. to 12.00 noon till framing of charge.

(SMT. BHARATI DANGRE, J.)