

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3493 of 2021

Mehadi Munavar Majid .. Applicant
Versus
The State of Maharashtra .. Respondent

...

Ms.Ashwini Achari with Advait Tamhankar and Taraq Sayed I.b
Loohan Chandka for the applicant.
Mr. S.V.Gavand, APP for the State.
PSI Shrikant Chavan from Bazarpeth police station.

CORAM: BHARATI DANGRE, J.
DATED : 14th OCTOBER, 2022

P.C:-

1 Heard Advocate Ashwini Achari, learned advocate for
the applicant and Mr. Gavand, learned APP for the State.

 The applicant is seeking a relief of being enlarged on
bail in connection with C.R.No.86 of 2021, registered with
Bazaar Peth Police Station, Kalyan under the provisions of NDPS
Act.

2 The applicant is charged for offences punishable
u/s.8C, 21C and 29 of the NDPS Act. He came to be arrested on
7/4/2021 and the release is sought on the ground, that there is no
compliance of Section 42 and Section 50 of the NDPS Act. Apart

from this, it is argued that the contraband which was seized, is not a commercial quantity and hence the rigors of Section 37(1) would not apply to the present case.

It is also argued that since the investigation is complete and co-operation is rendered by the applicant, his further incarceration is unnecessary, as he may take the consequences of the charges at the time of trial, but his further detention becomes unnecessary.

3 The prosecution case, which could be discerned from the charge-sheet is, on a secret information received by the police officer of Bazar Peth police station that two persons are bringing Narcotics Drugs i.e. Mephedrone (MD) powder for sale, police arranged a trap and carried out a raid, pursuant to which MD to the tune of 54 grams was seized. My attention is invited to the FIR lodged by one Umesh Vasudeo Sawant, informing that information is received from the secret sources, that some persons are likely to arrive near the MSEB office, Kalyan, for sale of MD. The secret information received was noted in the police diary and forwarded to the Assistant Commissioner of Police, Kalyan Division, in writing. Thereafter, two panchas were arranged and a trap was laid, at the place indicated in the secret information when one auto-rickshaw was seen travelling from Bail bazaar chowk to Murgi Mohalla at around 2.25 a.m, and three persons descended from the said rickshaw. On receiving signal that these are the same persons who were mentioned in the secret

information, they were apprehended and the applicant is alleged to be one of the said person.

4 After completing the procedural formality of issuing an intimation u/s.50 of the NDPS Act, the seizure was carried out and from the person – Ismail @ Bori Abbas, 18 grams of MD powder came to be seized, along with his mobile phone and some currency. As far as the present applicant is concerned, from his possession, 36 grams of MD powder was seized from his left side pant pocket along with his mobile with two sim cards and some cash. The third accused was the auto-rickshaw driver from whom no contraband is recovered.

 Samples were drawn from the seized contraband by taking out 3(three) gram powder from the bulk quantity, seized from two accused. The seized substance was numbered as 'A1', 'A2', 'B1' and 'B2'. The bulk quantity was then numbered as 'A' and 'B' and after affixing the seal of the police station, the further procedure was carried out.

5 The panchnama reveal that the substance seized from the applicant was MD admeasuring 36 grams and the two samples of three grams each, were numbered as 'B1' and 'B2' The report of analysis in respect of the seized substance is received and compiled in the charge-sheet. The communication dated 7/4/2021 addressed to the Director of the Forensic Science Laboratory, Kalyan would reflect that two samples were

forwarded for analysis, sample in form of Exhibit-A1, being the MD powder seized from co-accused Ismail, whereas the contraband in form of MD seized from the present applicant with the sample of three grams captioned as Exhibit-B1 was forwarded for analysis.

The examination report received from the Forensic Science Laboratory on 25/5/2021, however, has tested Exhibit-A1 and Exhibit-A2, though the report of analysis is positive for MD.

The learned counsel for the applicant is perfectly justified in relying upon the lacunae in the prosecution case by submitting that the sample of three gram drawn from the powder seized from the applicant was captioned as 'Exhibit-B1' and this was forwarded for analysis. However, B1 is not at all analyzed and the report received is only in respect of Exhibit-A1 and A2. This lacunae undisputedly which create a doubt in the case of the prosecution, and benefit must go to the applicant/ accused.

6 Apart from this, another point which is pressed into service is violation of Section 42 of the NDPS Act and the learned counsel for the applicant by referring to Section 42(2) would submit that where any Officer takes down any information in writing under sub-section (1) of Section 42 or record grounds for his belief under the proviso thereto, he shall within 72 hours, send a copy thereof to his immediate official superior.

The submission is that secret information is received by Sub Inspector of Police, Mr.Sanap, but the information which was forwarded to the ACP, is by Rajendra Ahire, Police Inspector, Bazaar Peth police station.

7 Advantage is sought to be taken of the two documents, one is the information forwarded by PI, Rajendra Ahire to ACP Kalyan Division, where he inform that information is received from the secret informer of API Sanap that on the given location, i.e. Bhoiwada, in front of MSEB Office, on the road heading towards Murgi Mohalla, Kalyan, three persons are likely to arrive for selling MD on 7/4/2021 ats 2.00 am.

As against this, the information communicated by Shri Sanap to the PI Rajendra Ahire is, on 6/4/2021, is argued to be distinct in nature, as the information is, that while on duty, his secret informer had reported to him that in the jurisdiction of Bazaar Peth police station at 2.00 am, three persons are likely to arrive for sale of MD.

The actual location of the place is conspicuously absent when PSI Sanap forward the information to Rajendra Ahire, but when Rajendra Ahire, PI forward the information to the ACB, Kalyan Divison, Kalyan, he gave the exact location of the place which is not the information received by Sanap.

8 In the complaint, the complainant has specifically mentioned that the information was received by Sanap, API and

therefore, it ought to have forwarded by him to his immediate Official superior, and if the said information is required to be transmitted to a higher official, it is expected that it should be the same information which is received, but there is inconsistency in the information received and the information transmitted and this discrepancy is itself the ground for the application to succeed.

9 It will be ultimately for the prosecution to fill up the lacunae by bringing appropriate evidence on record at the time of trial. It is imperative to follow the statutory mandate while the search is taken out and any lacunae therein would yield to the benefit of the accused. Hence, the applicant deserve his release on bail.

10 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 – Mehadi Munavar Majid in connection with C.R.No.86/2021 registered with Bazar Peth 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 report to the Bazar Peth police station, Kalyan on 21st and 22nd October 2022 from 2.00 pm to 5.00 p.m. 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.)