

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

CRIMINAL BAIL APPLICATION NO. 4243 OF 2021

SNEHA
NITIN
CHAVAN

Digitally signed
by SNEHA
NITIN CHAVAN
Date:
2022.02.21
17:45:51 +0530

Shah Rukh Yusuf Shaikh

..Applicant

V/s.

The State of Maharashtra

..Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 4310 OF 2021**

Ashpak Salim Khan

..Applicant

V/s.

The State of Maharashtra

..Respondent

Mr. Pratik Kalantri for the Applicants.

Mr. S.R.Agarkar, APP for the Respondent/State.

CORAM : C.V. BHADANG, J.

DATE : 18 FEBRUARY 2022

P.C.

1. Both these applications arise out of Crime No. 133 of 2021 Bhadrakali Police Station, District Nashik under Section 8(c) and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. According to the prosecution, on 24.05.2021, a secret information was received on the basis of which, a raid was conducted in which the Applicants were found to be in

possession of 10 grms each of MD i.e. together 20 grms of MD was recovered from the Applicants, who were together travelling in a car. The Investigating Officer after compliance with the statutory requirements has drawn a panchnama and after investigation a chargesheet is filed. The learned Special Judge at Nashik, has rejected the bail application of the Applicants on 27.09.2021. The Applicants were arrested on 24.05.2021 and since then, they are in jail.

3. I have heard the learned counsel for the Applicants and the learned APP. Perused record.

4. It is submitted by the learned counsel for the Applicants that the commercial quantity of MD is 50 grms and thus quantity allegedly recovered from the Applicants is lessor than Commercial quantity. It is submitted that the rigours of Section 37 of the Act will not be applicable. The learned counsel for the Applicant submitted that bail is rule while jail is an exception. It is submitted that the Applicants are falsely implicated in the offence.

5. On behalf of the Applicant, the reliance is placed on the decision of the Supreme Court in *Sami Ullaha v/s. Superintendent, Narcotic Central Bureau*¹ and the decision of

1 2009 ALL MR (Cri) 930 (S.C.)

the Himachal Pradesh High Court in *Sunny Kapoor @ Honey v/ s. State of H.P.*²

6. It is submitted that in the case before the Himachal Pradesh High Court, inspite of there being two criminal antecedents, the bail was granted.

7. The learned APP submitted that notwithstanding the fact that strictly speaking the Section 37 may not apply. The offence is serious and there is prima facie case showing involvement of the Applicants.

8. I have considered the submissions made and perused record. Prima facie it appears that the Raiding Officer after compliance with the statutory requirements under the Act for effecting a personal search have recovered the contraband from the conscious possession of the Applicants. Although, the rigours of Section 37 may not apply, that alone is not a ground for grant of bail. The question would depend on facts and circumstances of each case. A perusal of record shows that there is prima facie case showing the involvement of the Applicants in the said offence.

9. In Sami Ullaha (supra), order of cancellation of bail was subject matter of challenge before the Supreme Court. The case

2 Cr. MP(M) No. 2168 of 2020

before the Himachal Pradesh High Court also turned on its own facts.

10. In the circumstances, I do not find that a case for grant of bail is made out. The Criminal applications are rejected.

(C.V. BHADANG, J.)