

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.1621 OF 2023**

AKHTARIBANO D/O ABDUL RAUF
VERSUS
THE STATE OF MAHARASHTRA

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Mr. H. F. Pawar, Advocate for the Applicant.
Mrs. P. V. Diggikar, APP for Respondents-State.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 03rd OCTOBER, 2023.
PRONOUNCED ON : 12th OCTOBER, 2023.

PER COURT:-

1. The applicant seeks regular bail in connection with Special (NDPS) Case No.135/2022 pending before the Additional Sessions Judge, Bhusawal registered in pursuance to C.R. No.424/2021 at Raver Police Station, Jalgaon for the offences punishable under Sections 8(c), 21(c) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short 'N.D.P.S. Act, 1985') read with Section 34 of the Indian Penal Code.

2. The investigation was set in motion on the basis of the information dated 18.12.2021 given by Smt. Yogita Madhukar Narkhede, Assistant Police Inspector, Local Crime Branch, Jalgaon. It states that a secrete information was received by the Local Crime Branch, Jalgaon. The Police Inspector, Shri. Kirankumar Bakale arranged for raid and gathered a team including police officers, photographer and necessary articles for weighing and sealing contraband. The Government panchas were made part of the team. The raiding party was deputed at Dr. Babasaheb Ambedkar Chowk for trap. A lady having medium height and physic wearing burkha was trapped on the spot. She introduced herself as Akhtaribano Rauf (present applicant). On her personal search, two packets containing the contraband

powder was found in her possession. She informed to have procured the same from one Salimkhan resident of Mansaur (Madhya Pradesh). The contraband was weighing about 500.4 grams having estimated value of about Rs.1,00,08,500/-. The samples were sealed in presence of panchas and photographs were also taken. The applicant was arrested. She was in Magisterial Custody Remand till 29.12.2021. Since then, she is in Magisterial Custody Remand. The bail application of the applicant after filing of the charge-sheet has been rejected by the Special Court vide order dated 15.02.2023. Hence, this application.

3. Mr. Pawar, learned Advocate appearing for the applicant would submit that the applicant is behind the bar for more than 22 months. The investigation is completed. The charge-sheet is filed. The co-accused Salimkhan is already enlarged on bail. The trial is likely to take its own course. The applicant has been arrested only on account of suspicion. The investigation papers show the mandatory provision regarding search and seizure under Sections 42, 48, 50, 52-A of the N.D.P.S. Act, 1985 are not complied.

4. He would further submit that the Supreme Court of India has observed in catena of judgments that prolonging custody infringes the fundamental rights under Article 21 of the Constitution of India and grant of bail on account of undue delay in trial is not fetter of Section 37 of the N.D.P.S. Act, 1985. In support of his submissions he relies upon the judgment of this Court in case of ***Shivraj Gorakh Satpute Vs. State of Maharashtra***¹, the orders of the Supreme Court of India in case of ***Shariful Islam @ Sarif Vs. The State of West Bengal***², ***Gopal Krishna Patra @ Gopalrusma Vs. Union of India***³,

1 2023 SCC OnLine Bom 1996.

2 Special Leave to Appeal (Crl.) No.4173/2022.

3 Criminal Appeal No.1169 of 2022.

Nitish Adhikary alias Bapan Vs. State of West Bengal⁴ and Mohammad Salman Hanif Shaikh Vs. The State of Gujarat⁵. He would submit that in all the aforesaid cases, the right of the under trial prisoner to speedy trial has been approved and indefinite incarceration has been curtailed, thereby granting bail to the applicant. He would, therefore, urge that the similar course may be followed in the present case.

5. The learned APP strongly opposes the application for bail. She would point out that the applicant has been arrested while she was in possession of the contraband. The procedure as contemplated under law regarding search and seizure has been duly followed and supported by the photographs and videographs. She would submit that the Chemical Analysis report confirms that contraband found in possession of the applicant was narcotic substance of commercial quantity. She would further submit that the applicant is an accused in a case of murder registered before registration of the present crime. As such, there are criminal antecedents. The release of the applicant is likely to hamper the smooth trial, so also the possibility of absconding cannot be ruled out. She would further submit that the applicant is likely to indulge in similar offence.

6. Having considered the submissions advanced, it is apparent from the contents of the FIR that the applicant was arrested on the basis of the secrete information that she was selling a contraband. At the time of arrest, search was taken. The contraband substance weighing about 500.4 grams was seized from her. The panchanama is carried. The substance was seized and sealed. The report of Chemical Analysis has been received, which shows that the substance seized from the applicant was

4 Special Leave to Appeal (Crl.) No.5769/2022.

5 Special Leave to Appeal (Crl.) No.5530/2022.

Diazepam and Alprazolam. The quantity of Alprazolam is 247.960 grams. The commercial quantity would be 100 grams in case of the said substance. The evidence available on record pin points guilt against the applicant for the offences punishable under Sections 8(c), 21(c) of the N.D.P.S. Act, 1985. Although, it is argued that there is violation of mandatory provision regarding search and seizure envisaged in N.D.P.S. Act, on *prima facie* evaluation of material on record no such violation could be observed. Even otherwise, it would be a matter of trial. Considering the nature of offence coupled with the provisions of Section 37 of the N.D.P.S. Act, 1985 no case is made out for grant of bail.

7. The second submission advanced on behalf of the applicant that she is behind the bar for more than 22 months and trial is likely to take its own course, that itself would not be sufficient ground to release the applicant, when she is accused in the serious offence punishable under N.D.P.S. Act, 1985. It is true that the Supreme Court of India has recognized the right of under trial prisoner under Article 21 of the Constitution of India for speedy trial and in some cases even the embargo created under Section 37(1)(b)(ii) has been given overriding effect. On consideration of the factual aspect in the present case, this Court is of the view that the applicant cannot be given benefit of such observations. The nature of the contraband seized from the applicant, the criminal antecedents and the period of incarceration are material aspects. No general rule can be laid down in such case. Hence, applicant is not entitled for grant of bail. Hence, application stands rejected.

(S. G. CHAPALGAONKAR)
JUDGE