

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.2239 OF 2022

Mohammed Shaban s/o Hasan Ansari
@ Pappu Chor,
Age 54 yrs., Occ. Labour,
R/o Chandtara Chowk, Moulviganj,
Dhule, Tq. & Dist. Dhule.

... Applicant

... **Versus** ...

- 1 The State of Maharashtra,
Through Azadnagar Police Station,
Tq. & Dist. Dhule.
- 2 The Superintendent of Police,
Dhule.

... Respondents

...

Mrs. A.N. Ansari, Advocate for applicant

Mr. A.V. Deshmukh, APP for respondents

...

CORAM : SMT. VIBHA KANKANWADI, J

RESERVED ON : 23rd MARCH, 2023

PRONOUNCED ON : 21st APRIL, 2023

ORDER :

1 Present applicant is seeking bail under Section 439 of the Code

of Criminal Procedure, 1973 in connection with Crime No.257/2021 dated 28.10.2021 registered with Azadnagar Police Station, Tq. & Dist. Dhule, for the offence punishable under Section 20, 22(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and under Section 328, 276 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mrs. A.N. Ansari for the applicant and learned APP Mr. A.V. Deshmukh for respondent Nos.1 and 2.

3 It has been vehemently submitted on behalf of the applicant that now the investigation is complete and charge sheet has been filed. Co-accused Mohasin Ahemad Kabiruddin Shaikh and Irfan Mohammed Hasan Ansari came to be released on bail by this Court by order dated 14.10.2022 vide Bail Application No.440 of 2022 and Bail Application No.444 of 2022. It was held in that order that along with the charge sheet C.A. report has not been annexed and, therefore, on the ground of parity the applicant needs to be released on bail. The bail application filed by the present applicant came to be rejected on the ground that he was present at the spot when the raid was conducted. However, the perusal of the charge sheet would show that the report of the Chemical Analyzer was not submitted along with the charge sheet and it cannot be said that the applicant was possessing any narcotic

substance. The accused was arrested on 28.10.2021 and since then he is in jail. It will take long time to stand his trial. The applicant is ready to abide by the terms of bail. The criminal antecedents of the applicant were considered by the learned Trial Judge, however, he failed to consider that many of those cases have been resulted in acquittal.

4 Per contra, the learned APP submitted that though co-accused have been released by this Court by order dated 14.10.2022 and at that time the C.A. reports were not annexed to the charge sheet; yet, now those have been received. The accused persons were found possessing several number of tablets. Those tablets were of Alprazolam, 9 plastic pouches containing ganja like leaves with seed and stem crush was found from the person of the present applicant and Alpracan 0.5 tablets of Alprazolam of which quantity was 36816 worth Rs.88,604.10ps was found. Role of the applicant is more severe than the other two accused persons who have released on bail. Therefore, even this Court earlier had rejected the bail as well as even now the learned Special Judge has rejected his bail on 15.12.2022.

5 At the outset, it is to be noted that now the investigation is complete and charge sheet is filed. Further, the co-accused have been released on bail by this Court by order dated 14.10.2022. It was specifically

held at that time that when the earlier bail application was rejected, the investigation was incomplete and the charge sheet was yet to be filed. However, after the filing of the charge sheet the entire material was perused and it was noted that the charge sheet is incomplete. In a sense that no C.A. report was annexed. This Court has reiterated the ratio laid down in **Sunil Vasantrao Phulbande and another vs. State of Maharashtra** reported in 2002 (3) Mh.L.J. 689. Further, note was also taken of the decision in **Rafael Palafox Gracia vs. Union of India and another** reported in 2008(6) AIR Bom R 709. That was the main reason on which the co-accused came to be released on bail. The prosecution story would show that no such kit was taken along with it by the raiding party. What was seized were the tablets and that too it is under the original names. However, it is also to be noted that the Drugs Inspector Mr. Prashant Brahmanekar was accompanying the raiding party and it is said that he had certified that the seized medicine is "Schedule HI prescription drug" and, therefore, it is under the Narcotic Drug and Psychotropic Substance. It appears that the samples taken have been sent to Government Analyst, Food and Drugs Administration Laboratory but the report has not been submitted. In notification specifying small quantity and commercial quantity in respect of Narcotic Drugs Alprazolam is at Sr.No.178, small quantity is stated to be 5 grams and commercial quantity is said to be 100 grams. Definitely, we cannot collectively quantify the grams of each

tablet to arrive at a conclusion whether it is commercial or small quantity. Quantity has to be assessed with each of it. Even now, the prosecution has not clearly stated, as to whether the quantity i.e. seized is commercial or small. Further, as regards ganja is concerned, the C.A. report was not produced along with the charge sheet. As regards those tablets were concerned, the prosecution story shows that accused Pappu Chor i.e. the present applicant is selling the narcotic substance from a house near Chandtara Chowk. It is then stated that they went near the grocery shop which was near the house of the applicant and he was called, at that time, brother Munna Shaban Ansari i.e. the applicant in Bail Application No.444 of 2022 came there. When the raiding party disclosed their intention to take house search, he tried to flee away, however, he was nabbed. Thereafter the raid was conducted. That means, the ganja was not found in possession of the present applicant, so also, he was not even present at the said place. It appears that thereafter the applicant came to home, the purpose of raid was explained and then the tablets were found. To show the mandatory compliance, general diary details have been produced. It is, therefore, required to be considered by the Trial Judge, as to whether the mandatory provisions of the Narcotic Drugs and Psychotropic Substances Act have been followed or not, especially under Section 42 of the N.D.P.S. Act. It appears that the learned Special Judge has relied on Section 37 of the N.D.P.S. Act

and the observations from **State of M.P. vs. Kajad** reported in **AIR 2001 (Supp.) 3317**. The ratio cannot be denied, however, as the facts differ in each case the rigours of Section 37 of the N.D.P.S. Act can be relaxed even in cases involving commercial quantity if there is delay in the trial. Various High Courts have taken this view and it has been further reiterated by various decisions that mere operation of Section 37 of the N.D.P.S. Act will not disentitle the accused to be released on bail. The applicant is in jail for considerable long time. Though list of 34 cases is given as against the present applicant, however, they are right from 1997. Only list of such cases will not be sufficient. The present status of those cases ought to have been given. Further, it is to be noted that most of those cases are under Section 357, 380 of the Indian Penal Code. No case under the N.D.P.S. Act appears to have been filed against the present applicant at any earlier point of time. Therefore, these reasons are sufficient, as it would take further long time to decide the case and on that count the applicant is entitled to be released on bail. Hence, following order.

ORDER

- 1 The application stands allowed.
- 2 Applicant viz. **Mohammed Shaban s/o Hasan Ansari @ Pappu**

Chor, who has been arrested in connection with Crime No.257/2021 dated 28.10.2021 registered with Azadnagar Police Station, Tq. & Dist. Dhule, for the offence punishable under Section 20, 22(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and under Section 328, 276 of the Indian Penal Code, 1860, be released on P.R. of Rs.1,00,000/- (Rupees One Lac only) with one solvent surety in the like amount, on following conditions :

- i) The applicant shall not make any attempt to influence the prosecution witnesses in any manner.
- ii) The applicant shall not put any obstacle in the trial and remain present on the dates fixed by the concerned Special Court and co-operate the Special Court.
- iii) The applicant shall deposit his passport, if any, with the concerned Special Court.
- iv) The applicant shall not travel abroad without prior permission of the concerned Special Court.
- v) The applicant shall furnish his address in detail and Cell Phone number with the concerned Special Court and concerned Police Station to verify the same.

vi) Bail before Trial Court.

vii) It is clarified that the observations made in the above order are restricted to the decision of this application only and the Trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

(Smt. Vibha Kankanwadi, J.)

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