



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

BAIL APPLICATION NO.86/2023

IMRAN MOHAMED SHARIF KHAN ..APPLICANT

VS.

THE STATE OF MAHARASHTRA ..RESPONDENT

Adv. Ayaz Khan a/w. Adv. S. S. Bhandary, Adv. Dilip Mishra
for the applicant.

Ms. Veera Shinde, APP for the State.

API Sanjay Khandagale, ANC Kandivali.

CORAM : M. S. KARNIK, J.

DATE : AUGUST 31, 2023.

P.C. :

1. Heard learned counsel for the applicant and learned
APP for the State.

2. This is an application for bail in respect of the offence
punishable under Sections 8(c) read with 20(c) of the
Narcotic Drugs and Psychotropic Substances Act, 1985
(hereafter “NDPS Act”, for short) registered on 25/12/2021
vide C.R. No.104/2021 with Anti-Narcotics Cell, Kandivali
Unit.

3. The applicant was arrested on 25/12/2021. The
incident is dated 25/12/2021. The contraband is ‘charas’.

The applicant was found in possession of 1 kg and 10 gms of 'charas'. Less than 1 kg is non-commercial quantity. Thus, the applicant is found in possession of 'charas' which is more than 10 gms of the non-commercial quantity. The rigours of Section 37 of the NDPS Act will therefore apply.

4. Learned APP vehemently opposed the application for bail submitting that on the field test showed that two slabs which were found in possession of the applicant are the substance 'charas'. Thereafter, the samples were drawn and the same were sent for chemical analysis.

5. From the materials it is seen that after the field test, two slabs were not kept separately but kept together and representative samples were drawn from the two slabs which were kept together. Thus, *prima facie*, it appears that the samples were not drawn separately from the two slabs which by then was merged into one slab.

6. Learned counsel for the applicant has relied upon the decision of this Court in the case of Ibrahim Khwaja Miya Sayyed @ Raju Vs. The State of Maharashtra in Bail Application No.1296 of 2022 in support of his submission. In paragraph 11 it is observed thus:-

“11. The records also indicate that the investigating agency has not drawn samples independently from both the bags, but had mixed together the entire contraband in both the bags and thereafter drawn two samples, one of which was forwarded to CFSL for analysis. The Delhi High Court in *Amani Fidel Chris vs. Narcotics Control Bureau* CRL Appeal No.1027 of 2015 and *Ram Bharose (supra)* has considered the Standing Order 1 of 88, which is *pari material* with Standing Order 1 of 89 and has held that “Mixing of the contents of container/package (in one lot) and then drawing the representative samples is not permissible under the Standing Orders and rightly so since such a sample would seized to be a representative sample of the corresponding container/ package”. In the instant case, as noted above, the sample sent to CFSL was not the representative sample. Considering this vital aspect, in my considered view the Applicant would be entitled for bail.”

7. In my considered view, *prima facie*, the aforesaid facts and circumstances are sufficient to get over the rigor of Section 37 of the NDPS Act for enlarging the applicant on bail. The applicant is in custody for more than twenty months with no possibility of the trial concluding any time soon. The investigation is complete. The charge-sheet has been filed. There are no criminal antecedents reported

against the applicant and therefore, there may not be a possibility of the applicant committing a similar offence. The applicant can be enlarged on bail by imposing conditions. In my opinion, the applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Imran Mohamed Sharif Khan in connection with C.R. No.104/2021 with Anti-Narcotics Cell, Kandivali Unit, shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more local sureties in the like amount.
- (c) The applicant shall attend the Investigating Officer of Anti-Narcotics Cell, Kandivali Unit once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(f) The applicant shall not leave the Mumbai/Mumbai Suburban District without the leave of the trial Court.

8. The application is disposed of.

(M. S. KARNIK, J.)