

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

BAIL APPLICATION NO. 245 OF 2022

Rahul Agrawal @ Mohammed
Umer Kamal Kumar Shiakh
Age : 34 Years, R/o. : Room No.05,
Shiv Parvati Welfare Society,
Pragati Nagar, Nalasopara (E),
Vasai, Palghar

...Applicant

vs.

State of Maharashtra
[Nayanagar Police Station vide
C.R. No. II – 456/2021 dt.12.08.21)

...Respondent

Mr.Ayaz Khan a/w Mr.Dilip Mishra – Advocates for Applicant.
Mr.S.R.Agarkar – APP for Respondent-State.
Mr.Vilas V. Kute – API – Anti Narcotic Cell – MBVV.

CORAM : S. M. MODAK, J.

DATED : 28TH JUNE 2023

P.C. :

1. On the last date, I have heard learned Advocate Shri.Mishra for the Applicant and learned APP.
2. In the order dated 21st June, 2023, various submissions made on behalf of Applicant are recorded. There was an issue about the timings mentioned in the panchnama. It is in respect of memorandum panchnama at the instance of the Accused No.1 and

Satish Sangar

the arrest timing for Accused No.2 through the present Applicant. It also deals with the description of contraband articles mentioned in the seizure panchnama on Page Nos.25 and 26 on one hand and description mentioned in the statement of witness Salim Akbar Khan (Page No.43). Furthermore, there is contention that samples were taken at the spot and not as laid down under Section 52-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 [“NDPS Act”].

3. On the last date, an adjournment is granted to learned APP to take instructions.

4. He reiterated the earlier submission that information-note given to the Magistrate is on Page No.27. It deals with seizure from the present Applicant – Rahul. However, except this document, he fairly admits that they have not proceeded as per the provisions of Section 52-A of NDPS Act.

5. The Hon’ble Supreme Court in case of *Union of India V/s. Mohanlal and Anr.*¹ after taking an overview of the situation prevailing in the country was pleased to issue certain directions. The directions of taking samples at spot was deprecated. Because, ultimately what can be considered in evidence is taking of samples

¹ (2016) 3 SCC 379

before the Magistrate as contemplated under Section 52-A(4) of the NDPS Act. (Para No.17).

6. Admittedly, in this case, it has not happened. There is also reliance on the judgment recently delivered by the Hon'ble Supreme Court in case of *Simranjit Singh V/s. State of Punjab*² wherein, it is observed that the act of drawing of samples at the time of seizure is not in conformity with the law laid down by this Court in case of *Union of India V/s. Mohanlal and Anr. (supra)* it creates serious doubt about Prosecution case that substance recovery as contraband (Para No.9).

7. So, even though the trial will be conducted, there is serious doubt about the admissibility of the evidence on the point of drawing of samples at the spot and subsequent analysis by the Chemical Analyzer. The facts and circumstances compels this Court to make this observation. So, in view of that, the bar under Section 37 of NDPS Act is lifted.

8. In view of that, I have not dealt with other points. The Applicant has made out a case for bail. Hence, order :-

² Criminal Appeal No. 1443 of 2023 : 9th May, 2023

O R D E R

- (i) Application is allowed.
- (ii) Applicant Rahul Agrawal @ Mohammed Umer Kamal Kumar Shiakh be released on bail in connection with C.R. No. 456 of 2021 registered with Nayanagar Police Station for the offences punishable under Sections 8(c) and 20(b)(ii) of NDPS Act, on furnishing personal bond and surety bond of Rs.50,000/-.
- (iii) Applicant is directed to give attendance to Nayanagar Police Station on first Monday of every month from 10.00 to 12.00 noon for one year.
- (iv) In case of breach of any of the conditions, the bail of the Applicant is liable to be cancelled after notice.

9. These are my prima facie observations. Let the learned trial Court need not be influenced by them.

10. Application is disposed of in the aforesaid terms.

11. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]