



Diksha Rane

3.ba.157-23.odt

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

BAIL APPLICATION NO.157 OF 2023

AFSAR ANWAR HUSAIN SAYYAD

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Ayaz Khan for the applicant.
Ms. Veera Shinde, APP for the State.
PC Gitesh Kadam, DCB-CID, Unit-IX.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 29, 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), 20(c), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter “NDPS Act”, for short), registered vide C.R. No.15/2021 with Malavani Police Station and also vide C.R. No.6/2021 with DCB-CID, Unit-IX, on 22/1/2021.
- 3.** Pursuant to a secret information received on 22/1/2021 which was recorded by the authorized officer, the raiding party reached the spot where they found the

applicant. The applicant was apprised his right under Section 50 of the NDPS Act and his search was carried out and some quantity of 'ganja' was found. Thereafter, on further inquiry the applicant indicated the place where 'ganja' was stored. Upon entering the house, the investigating agency recovered 58 kgs. of 'ganja' which was found there in 27 bags. The entire 'ganja' was then mixed together and representative samples were thereafter drawn.

4. This Court in the case of **Parvez Haseen Khan v/s. The State of Maharashtra (through A.N.C. Bandra Unit)** in Criminal Bail Application No.3486/2021 in paragraphs 4 and 5 has observed thus:-

"4. The panchanama dated 25/11/2020 records that the investigating agency had mixed together the entire contraband contained in all the three bags and thereafter drawn three samples, one of which was forwarded to CFSL for analysis. The learned Single Judge of Delhi High Court in **Amani Fidel Chris** (supra) 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 cease to be a representative sample of the corresponding container/package."* It is stated that decision in **Amani Fidel Chris** (supra) was challenged by NCB before the Apex Court and that the Special Leave Petition has been dismissed by the Hon'ble Supreme Court. Similar view is taken by this Court in **Ibrahim Khwaja**

Miya Sayyed and **Hari Mahadu Valse** (supra) and by Telangana High Court in **Baba Sow Chandekar** (supra).

5. It is also to be noted that the Applicant is in custody since 25/11/2020. It is stated that till date charge has not been framed. It is evident that considering the large pendency, the trial is not likely to conclude soon. In **Rabi Prakash Vs. The State of Odisha in Special Leave to Appeal (Crl.) No.4169 of 2023** the Hon'ble Supreme Court has observed that "*The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b) (ii) of the NDPS Act.*"

5. The applicant was arrested on 22/1/2021 and now is in custody for more than two years and nine months. There is no possibility of the trial commencing or concluding any time soon. Also on the ground of long incarceration, apart from what is stated herein above, I am of the opinion that *prima facie*, in the aforesaid facts and circumstances, the rigours of Section 37 of the NDPS Act can be got over to satisfy the first of the twin conditions.

6. The investigation is complete. The charge-sheet has been filed. There are no criminal antecedents reported against the applicant, *prima facie*, it is not likely that the applicant will commit any offence in future. I propose to

impose conditions. The applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Afsar Anwar Husain Sayyad in connection with vide C.R. No.15/2021 with Malavani Police Station and also vide C.R. No.6/2021 with DCB-CID, Unit-IX, 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 DCB-CID, Unit-IX, 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 attend the trial regularly.

(g) The applicant shall surrender his passport, if any, to the investigating officer.

7. The application is disposed of.

(M. S. KARNIK, J.)