

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

BAIL APPLICATION NO.289/2022

MEHUL HARISH MAKHWANA

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Ms. Ashwini Achari a/w. Adv. Advait Tamhankar i/b. Adv. Taraq Sayed for the applicant.

Ms. P. N. Dabholkar, APP for State.

API Vilas V. Kute, Anti Narcotics Cell, Mira Bhayander-Vasai Virar.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 17, 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 First Information Report (FIR) No.235/2021 registered with the Navghar Police Station, under Sections 8(c), 21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter “NDPS Act”, for short).

3. The applicant was found in possession of 25 grams of Mephedrone (MD). The applicant is the original accused no.2. The applicant had procured the quantity of MD from

the co-accused and was to sell the same to the accused no.4. The applicant was found in possession of non-commercial quantity of MD, therefore bar under Section 37 of the NDPS Act shall not be applicable to the present case. The applicant has claimed parity with the accused nos.3 and 4. However, in view of the antecedents the applicant cannot claim complete parity.

4. Learned APP submitted that the applicant does not deserve to be enlarged on bail as the applicant on earlier occasion was found in indulging in the offence registered vide C.R.No.15/2018 of the Chitalsar Police Station under the NDPS Act. The applicant was even then found in possession of non commercial quantity. The applicant was arrested and released on bail in that matter. Thereafter, the present offence is committed.

5. In my opinion, considering that the applicant is in custody since March 26, 2021 for a period of more than one year and ten months with there being no possibility of trial commencing any time soon, the criminal antecedent reported has to be balanced with the applicant's right to a speedy trial. As the applicant is found in possession of non-

commercial quantity, some stringent conditions of reporting can be imposed instead of depriving the applicant the facility of bail.

6. Further, learned counsel for the applicant makes a statement that the applicant will not reside in the area of Mumbai/Mumbai Suburban and Thane District till the trial is over. The statement is accepted.

7. It is made clear that if the applicant is found indulging in the similar activity henceforth, this Court may be constrained to take a serious view of the matter including the cancellation of the present bail. Hence, the following order.

ORDER

(a) The application is allowed.

(b) The applicant in connection with FIR No.235/2021 registered with the Navghar Police Station, shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more sureties in the like amount.

(c) The applicant shall report to the Investigating Officer of the concerned police

station twice in a month on every alternate Saturday from the date of his release, 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) Except for the purpose of attending the trial and the investigating officer, the applicant shall not enter the area of Mumbai/Mumbai Suburban and Thane District.

8. The application is disposed of.

(M. S. KARNIK, J.)