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

BAIL APPLICATION NO.420 OF 2023

LAZINABI USMAN KHAN @ MAHEK ..APPLICANT
VS.
NARCOTIC CONTROL BUREAU AND ANR. ..RESPONDENTS

Adv. Shreerat Kamath a/w Adv. Puja Yadav for the
applicant.

Adv. Ashish Chavan a/w Adv. Zishan Quazi for the
respondent No.1.

Ms. Veera Shinde, APP for the State-respondent No.2.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 7, 2023

P.C. :

1. Heard learned counsel for the applicant and learned
counsel for the respondent No.1 and learned APP for the
State.

2. This is an application for bail in respect of the offence
punishable under Sections 8(c), 22(c), 27, 28, 29, 30, 35 of
the Narcotic Drugs and Psychotropic Substances Act, 1985
(hereafter "NDPS Act", for short) registered vide C.R. No.73
of 2021 with Narcotics Control Bureau, Mumbai Zonal Unit,
Mumbai.

3. The applicant is the accused No.1. The respondents received an information that one person namely Jai Prakash Bhatt (accused No.4) is presently staying at Room No.404, Hotel Bindra's Supremacy, Building No.2, Road No.11, MIDC, Andheri East, Opposite Kaatyayni Residency, Mumbai. The information received was that this person is having Mephedrone (MD) with him in the said room. The accused No.4 was staying in the said hotel for MD dealings. Accordingly, two teams were formed to act as per the NDPS Act. When the respondents reached the hotel room in question, they found the present applicant instead of the accused No.4 about whom they had specific information. The applicant is a woman. It is the submission of learned counsel for the applicant that there was no lady officer along with the raiding party and the search was conducted in violation of the provisions of Sections 42 of the NDPS Act. It is the submission that the information was obtained in respect of accused No.4 and when the raiding party did not find the accused No.4, in that case the respondents could not have carried out the search and arrest of the applicant

on the basis of such authorisation. Learned counsel for the applicant further submitted that the search was conducted between sunset and sunrise without any authorisation and there are no grounds of belief recorded by the empowered officer as is the requirement of Section 42 of the NDPS Act.

4. The applicant who is a woman was found in possession of 51.10 grams of MD. Further, it was revealed by her that 52.30 grams of MD was kept in the locker belonging to the accused No.4.

5. Learned counsel for the respondents opposed the application for bail. It is submitted that the respondents were authorised to conduct the search on the basis of the authorisation and there has been no violation of the provisions.

6. I refrain from dealing with the aforesaid submissions of the learned counsel for the applicant as I am satisfied that the twin conditions of Section 37 of the NDPS Act can be satisfied for the reasons mentioned hereinbelow.

7. In my opinion, suffice it to observe that the applicant is a woman who was found in possession of 51.10 grams of

MD which is 1.10 grams more than the commercial quantity. The applicant was arrested on 28.07.2021. The applicant is in custody for more than two years and four months with no possibility of the trial concluding any time soon. There are no criminal antecedents reported against the applicant. The quantity of MD which was found in the locker was belonging to the accused No.4 in respect of whom the authorisation was issued. In the facts and circumstances of the present case I am of the opinion that the rigours of Section 37 of the NDPS Act can be overcome. There are no criminal antecedents reported against the applicant under the NDPS Act and therefore, it is not likely that the applicant will commit any similar offence during the pendency of the trial. The applicant can be enlarged on bail by imposing stringent conditions. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Lazinabi Usman Khan @ Mahek in connection with C.R. No.73 of 2021 registered with Narcotics Control Bureau, Mumbai Zonal Unit, Mumbai shall be released on bail on her furnishing P.R. Bond of

Rs.50,000/- with one or more sureties in the like amount.

(c) The applicant is permitted to furnish cash bail surety in the sum of Rs.50,000/- for a period of 6 weeks in lieu of surety.

(d) The applicant shall attend the Investigating Officer of Narcotics Control Bureau, Mumbai Zonal Unit, Mumbai once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m.

(e) 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.

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

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(h) The applicant shall not leave the country without the permission of the trial Court.

(i) The applicant shall surrender her passport, if any, to the investigating officer. If the applicant does not have a passport, she should file an affidavit to that effect before the trial Court within 15 days of her release.

8. The application is disposed of.

(M. S. KARNIK, J.)