

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

BAIL APPLICATION NO.642 OF 2022

Shoaib Ayub Sikrawa

...Applicant

Versus

Anti Narcotics Cell and Anr.

...Respondents

....

Mr. Taraq Sayed with Ms Alisha Parekh, Ms Ashwini Achari i/b. Mr. Advait Tamhankar for the Applicant.

Ms P.N. Dabholkar, APP for the Respondents -State.

CORAM: G.A. SANAP, J.

DATE : 21st DECEMBER, 2023.

P.C.:-

1. The applicant- accused No.3 has made this application for bail in C.R. No.55 of 2021 registered with Anti Narcotic Cell, Bandra Unit, Mumbai, for the offences punishable under Section 8(c) r/w Sections 21(c), 22(c), 27(a) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. Heard Mr. Taraq Sayed, learned counsel for the accused No.3 and Ms P.N. Dabholkar, learned APP for the Respondent-State. Perused the record and proceedings.

MEGHA
SHREEDHAR
PARAB
Digitally signed
by MEGHA
SHREEDHAR
PARAB
Date:
2023.12.22
16:23:09
+0530

3. The learned Advocate submitted that accused No.3 was arrested on the basis of Whatsapp messages sent by accused No.1 to the mobile phone of accused No.3. Learned Advocate submitted that accused No.3 was not present on the spot when the recovery of narcotic drug was made from accused Nos.1 and 2. The learned Advocate submitted that the CA report of data allegedly stored in the mobile phone of accused No.3 is of no help to the case of the prosecution. Learned Advocate submitted that even if the whatsapp messages sent by accused No.1 are considered, the same would indicate that the accused No.1 had dealings with the father of the accused No.3. Learned Advocate submitted that save and except the statement of the co-accused there is no other evidence compiled in the charge-sheet to establish complicity against accused No.3 in commission of the crime. Learned Advocate submitted that there is no evidence against accused No.3, which would warrant his indefinite incarceration. Learned Advocate submitted that accused No.3 is ready to abide by the conditions that may be imposed by this Court.

4. Learned APP submitted that the photographs of the

narcotic drugs were sent by accused No.1 to the mobile phone of accused No.3. Learned APP pointed out that sim card of the mobile phone was in the name of Shahin Sikrawa, sister of accused No.3. The sister has given a statement that accused No.3 was using her mobile phone. Learned APP submitted that even though the report of the data from the mobile phone of accused No.3 has not supported case of the prosecution, the evidence in the form of Whatsapp chats retrieved from the mobile phone of accused No.3 is sufficient to establish the complicity of accused No.3 in this crime. Learned APP pointed out that accused No.3 hails from Madhya Pradesh and therefore the possibility of his fleeing from justice cannot be ruled out. It is further submitted that the possibility of the accused indulging in the similar crime also cannot be ruled out.

5. It is the case of the prosecution that on the basis of the oral information the raid was conducted and the accused Nos.1 and 2 were apprehended on the spot. 1 Kg 800 grams of brown sugar and 1 kg 100 grams of Mephedrone was found from possession of accused No.1. 150 grams of Mephedrone was found in a yellow colour cloth bag carried by accused No.2. It is the case of the

prosecution that the investigation revealed the trace of the drugs to accused No.3. The prosecution mainly relied upon the whatsapp chats of the alleged drug dealings between accused Nos.1 and accused No.3. It is the case of the prosecution that considering the fact that quantity of the drugs recovered is a commercial quantity, rigours of Section 37 of the NDPS Act would equally apply against accused No.3, because he was part of the conspiracy.

6. In order to appreciate the rival submissions for the purpose of deciding the bail application, I have perused the material. The Whatsapp messages retrieved from the mobile phone of the accused No.1 are part of record. A perusal of those messages prima facie indicates that the accused No.3 had no direct talk or dealings with accused No.1. The mobile phone of accused No.3 was seized and it was sent to FSL for analysis. The FSL report is dated 29/11/2023. A perusal of the report shows that the mobile phone was analysed but the deleted data could not be recovered. It is opined that the sim card did not have facility to store chats and multimedia. It is therefore apparent that the whatsapp chats from the mobile phone of the accused No.3 could not be recovered. In my

view for the purpose of deciding the bail application, the report of analysis of the mobile phone cannot be overlooked.

7. It is further seen that complicity of accused No.3 is sought to be established on the basis of the statement of the co-accused. The statement of the co-accused is not legally admissible piece of evidence. The perusal of Whatsapp chats recovered from the mobile phone of accused No.1 does not prima facie indicate that the accused No.3 directly dealt with the accused No.1 for the transaction of purchase or sale of narcotic drugs. It is undisputed that father of accused No.3, as per the case of the prosecution was dealing in narcotic drugs. He was arrested in one case in State of Madhya Pradesh in the month of August-2021. The last contact established on the basis of Whatsapp chat with accused No.3 was in May-2021. At that time father of accused No.3 was not arrested. The Whatsapp chat would indicate that accused No.3 on receipt of the call or message replied stating that he would convey the information or message to his father. In my view therefore, for the purpose of deciding bail application this material needs to be taken into consideration. Consideration of this material in totality would

indicate that at this stage prosecution has not made out a case to invoke rigours of Section 37 of the NDPS Act against accused No.3. In the teeth of such weak evidence against accused No.3 he cannot be kept behind bars for indefinite period. The apprehension put forth by the learned APP can be taken care of by imposing appropriate conditions.

8. In view of above, I conclude that the accused has made out a case for release him on bail. Hence, following order:-

- (i) The application is allowed;
- (ii) The Applicant -accused No.3-Shoaib Ayub Sikrawa, be released on bail in C.R. No.55 of 2021 registered with Anti Narcotic Cell, Bandra Unit, Mumbai, for the offences punishable under Section 8(c) r/w Sections 21(c), 22(c), 27(a) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on his furnishing P.R. Bonds in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with one or two solvent sureties in

the like amount.

(iii) The Applicant shall not directly or indirectly tamper with the prosecution evidence.

(iv) The Applicant shall not pressurise, threaten or induce the prosecution witnesses directly or indirectly.

(v) The Applicant shall attend Anti Narcotic Cell, Bandra Unit, Mumbai, on the first day of every month till completion of the trial.

9. It is made clear that observations made herein above be construed as expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial Court.

10. The application stands disposed of in above terms.

(G.A. SANAP, J.)