

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.657 OF 2022**

Rahmat Yusuf Pathan ...Applicant
vs.
State of Maharashtra ...Respondent

Mr. R. D. Suryawanshi for the Applicant.
Mr. H. J. Dedhia APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 19TH JULY 2023

P. C. :

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State.
2. The officer is present. The present Applicant is in habit of committing offence under the NDPS Act. The Applicant is accused in C.R. No.I-518 of 2020, registered with Mahatma Phule Chowk police station for the offence punishable under Sections 307, 326, 323 read with 34 of IPC and Sections 4 and 25 of the Arms Act. In the said offence the Applicant is granted bail by this Court (M. S. Karnik, J.) in Bail Application No.656 of 2022, dated 1st February 2023.
3. The Applicant is absconding in the said crime when police of

Mahatma Phule Chowk police station learnt that the Applicant had come to his house at Kalyan (West). They laid trap on 24th April 2021. The Applicant tried to run away but was not successful, his house was searched and they found Ganja in one plastic gunny bag. It is costing about Rs.4,05,000/-. Two different samples were taken as A-1 and A-2. FIR is at page 24.

4. After investigation, the charge-sheet is filed against present Applicant and the offence is registered under Sections 8(c), 20(c) and 29 of the NDPS Act. It is true that the samples are taken at the spot. The intimation given to learned Magistrate is on page 61. Whereas forwarding letter to the Chemical Analyser dated 26th April 2021, is on page 69. The Application made before the learned Magistrate under Section 52A of the NDPS Act is dated 27th April 2021, (page 72). They have produced the certificate issued by the learned Magistrate dated 27th April 2021, (page 78). Admittedly, the learned Magistrate has not taken samples, whatever samples are sent to the Chemical Analyser are taken at the spot. There is positive chemical analysis report. It is clear violation of the directions given in the case of *Union of India Vs. Mohanlal and Anr.*¹

¹ (2016) 3 SCC 379

para 31.1. Ultimately, what will be produced before the trial Court is on the basis of sampling done at the spot. Recently, the Supreme Court in the case of *Simranjit Singh Vs. State of Punjab*² has not considered this evidence and set aside the conviction. Apart from that there are criminal antecedents against the present Applicant. It is mentioned on page 42 of the compilation. In all there are five offences against the Applicant. He is discharged in the offence registered with Anti Narcotic Cell, Mumbai. The offence and case number, both are given. Whereas, he is on bail in offence under Section 307 of the IPC. He has placed order of acquittal in the offence under Section 302 of IPC and also in offence under Section 379 of IPC.

5. It is true that one of the condition laid down by the NDPS Act is arriving at the findings that the accused is not likely to commit an offence. Another condition is arriving at satisfaction, that there is no reasonable ground to believe that the Applicant is guilty of offence.

6. I think bar under Section 37 of the NDPS Act will not be applicable in view of defective sampling. Already, this Court while

² Cri. Appeal No. 1443/2023 dt. 9/05/2023 SC

granting him bail in Bail Application No.656 of 2022, has asked him not to enter Thane and Mumbai, and had asked him to stay at Raigad District. Considering this background, I am inclined to grant him bail subject to conditions. Hence, the following order is passed :

O R D E R

- (a) The Applicant-Rahmat Yusuf Pathan be released on bail in connection with C.R. No.I-299 of 2021, registered with Mahatma Phule Chowk police station for the offences punishable under Sections 8(c), 20(c), 29 of the NDPS Act, on furnishing personal bond and surety bond of Rs.1,00,000/-
- (b) The Applicant shall not threaten the prosecution witnesses or allure them in any manner.
- (c) The Applicant shall not enter remaining Districts of Mumbai and Thane, except for attending the Court trial and only when the Applicant required by the Investigating Officer.
- (d) The Applicant will stay at Raigad District and furnish fresh address to the Investigating Officer.
- (e) The Applicant is directed to give attendance to nearest police station on every Sunday from 10 am to 1 pm.
- (f) Needless to say, violating of the condition above will make the

Shiv

Order is modified as per order dated 11th August 2023

Applicant liable for cancellation of bail, after notice to the Applicant.

7. Application is disposed of accordingly.
8. These are my prima facie observations and the trial Court may not be influenced by that.
9. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]