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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.895 OF 2022

Sameer Aalam Mohd. Ismail Shaikh	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Advait Tamhankar a/w Ashwini Achari, Mr. Taraq Sayed, Mr. Lochan Chandka for the Applicant.

Mr. S. R. Agarkar, APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 12TH JULY 2023

P. C. :

1. Heard the learned advocate Mr. Thamhankar on 25 April 2023 and 28 June 2023. The only point that is canvassed today is not taking sample before the Magistrate. He relied upon the observations in the case of *Union of India vs. Mohanlal*¹.

2. So the admitted position is that samples were drawn on 8 June 2019. That panchanama is there at page 43. Along with two accused, this present applicant was taken into custody. The samples are marked A1 & A2 and B1 & B2 whereas residue marked as A & B which is at pages 45 to 46.

1 2016(3) SCC 379

3. No doubt, the learned Magistrate while issuing certificate dated 24 June 2019 has certified the weight of seized inventory as well as seal of the samples, it will not cure the defect which has already occurred. It is in respect of drawing samples at the spot itself. This is clear violation of the observations of the Hon'ble Supreme Court in the case of *Mohanlal* (supra) more particularly in paragraph 31.1. If such evidence is adduced before the trial Court, it will not be accepted as it is observed in the Hon'ble Supreme Court in the case of *Simranjit Singh vs. State of Punjab* ².

4. In view of that, I have not dealt with other points. The applicant has made out a case for bail. The bar under section 37 of N.D.PS.Act will not be applicable. There are no antecedents. Hence, the following order;

ORDER

- (a) The applicant be released on bail in connection with C.R. No. II 278 of 2019 registered with Kalwa Police Station for the offences punishable under Sections 8(c) r/w Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on furnishing

² Criminal Appeal No.1443/2023 by the Hon'ble Supreme Court dated 09.05.2023

personal bond and surety bond of Rs.50,000/-.

- (b) The applicant shall not threaten the prosecution witnesses or allure them in any manner.
- (c) The applicant shall give attendance to the Kalwa Police Station on second and fourth wednesday of every month from 4 to 6 pm for one year.
- (d) Needless to say, violating of the condition above will make the applicant liable for cancellation of bail, after notice to the applicant.

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

[S. M. MODAK, J.]