

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

BAIL APPLICATION NO. 1017 OF 2022

Shakil Shafi Memon @ Chikna

Age : 47 Years, R/o. : Room No.1101,

Building No.2, Oswal Heights,

Kanakia, Mira Road (E), Thane

...Applicant

vs.

State of Maharashtra

[Kashimira Police Station vide

C.R. No. 988/2020)

...Respondent

Mr.Ayaz Khan a/w Mr.Dilip Mishra – Advocates for Applicant.

Mr.H.J.Dedhia – APP for Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 28TH JUNE 2023

P. C. :

1. I have already heard learned Advocate Shri.Ayaz Khan for the Applicant. His main contention raised is about not drawing samples as contemplated under Section 52-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 [“NDPS Act”]. Matter was adjourned in order to assist the learned APP to take instructions. On the last date, it was submitted that intimation was given to learned Magistrate under Section 52-A of the NDPS Act. The certificate

Satish Sangar

issued by the Court of JMFC – Court No.5, Thane dated 24th February, 2023 is placed on record. It is taken on record and marked as Annexure-X. It is in pursuance to the provisions of Section 52-A of NDPS Act.

2. According to Mr.Ayaz Khan, this will not rectify the defect which has already occurred. Furthermore, the samples taken before the learned Magistrate were not sent for the analysis of Chemical Analyzer and according to him, this was done after the filing of Bail Application taking ground about said non compliance.

3. The present Applicant is Accused No.2 as per the charge-sheet submitted by Kashimira Police Station for the offence punishable under Sections 8(c), 20, 22(c) and 29 of NDPS Act. During investigation, it was disclosed that the contraband mephedrone was procured by this Applicant from Accused no.3 - Haji Mohammed. Furthermore, it was disclosed during his interrogation that he has procured the contraband from Accused No.4 – Mohammed Arif.

4. Even though the seized contraband is of commercial quantity, the Court has to ascertain that whether the grievance of non compliance can be considered at bail stage or not. It is not that every contravention amounts to lifting of a ban under Section 37 of NDPS

Act.

5. However, in this case, the provisions of Section 52-A of NDPS Act which are mandatory in nature, they are not followed. So, even though spot samples are taken and even though they are sent to Chemical Analyzer having positive report, there is defect in this procedure as observed in case of *Union of India V/s. Mohanlal and Anr.*¹. There is also reliance on the judgment recently delivered by the Hon'ble Supreme Court in case of *Simranjit Singh V/s. State of Punjab*² wherein, it is observed that the act of drawing of samples at the time of seizure is not in conformity with the law laid down by this Court in case of *Union of India V/s. Mohanlal and Anr. (supra)*, it creates serious doubt about Prosecution case that substance recovery as contraband (Para No.9).

6. Hence, the Applicant has made out a case for grant of bail. The bar under Section 37 of NDPS Act is lifted. Hence, order :-

ORDER

- (i) Application is allowed.
- (ii) Applicant Shakil Shafi Memon @ Chikna be released on bail in connection with C.R. No. 988 of 2020 registered with Kashimira Police Station for the

¹ (2016) 3 SCC 379

² Criminal Appeal No. 1443 of 2023 : 9th May, 2023

offences punishable under Sections 8(c), 20, 22(c) and 29 of NDPS Act of NDPS Act, on furnishing personal bond and surety bond of Rs.50,000/-.

(iii) Applicant is directed to give attendance to Kashimira Police Station on first Tuesday of every month from 10.00 to 12.00 noon for one year.

(iv) In case of breach of any of the conditions, the bail of the Applicant is liable to be cancelled after notice.

7. These are my prima facie observations. Let the learned trial Court need not be influenced by them.

8. Application is disposed of in the aforesaid terms.

9. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]