



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

BAIL APPLICATION NO. 884 OF 2023

KHAN ABUSUFIYAN SHAKIL AHMED ..APPLICANT
VS.
1. UNION OF INDIA
2.THE STATE OF MAHARASHTRA ..RESPONDENT

Mr. Dilip Mishra a/w Mr. Ayaz Khan, for the Applicant.
Ms. Manisha Jagtap, for Respondent No.1.
Ms. Rutuja Ambekar, APP for the State- Respondent No.2.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 2, 2023

P.C. :

1. Heard learned counsel for the applicant, 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 22(b), 27, 27A, 28, 29, 30 and 35 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter 'the NDPS Act' for short) registered vide C.R. No. NCB/MZU/CR-73/2021 registered with Narcotic Control Bureau, Mumbai Zonal Unit.
3. The applicant is the accused no.3. The applicant was arrested on 26/08/2021.

4. The accused nos. 1 and 2 were initially arrested. The accused no.1 was found with commercial quantity of contraband Mephedrone (MD). The accused no. 2 was not found in possession but according to prosecution, he was actively involved in dealing in contraband. The accused no.4 and accused no. 5 are the accused from whom the accused no.1 procured supply of contraband. The applicant is the accused no.3. The accused no. 5 who is alleged to be the mastermind of the cartel and is the main supplier of MD, during the course of investigation, it was revealed that the accused no.5 is doing MD trafficking business through one of his main peddler namely Khan Abusufiyan Shakil Ahmed i.e. is the present applicant-accused no.3. The house of applicant was searched on 26/08/2021. From the person of the applicant quantity of 10.2 grams of MD is recovered. The same is an intermediate quantity.

5. Learned counsel for the respondent no.1 Ms. Jagtap opposed the application. My attention is invited to the affidavit-in-reply filed on behalf of the respondents. It is submitted that the applicant is a part of the chain and involved in serious offence including illicit drug trafficking.

It is submitted that the applicant has nexus with other co-accused who are already arrested in the said C.R.. It is submitted that commercial quantity of the contraband was recovered from the other accused and therefore even the applicant is concerned with the commercial quantity and therefore the rigours of section 37 of NDPS Act will apply. It is further submitted that the applicant was found in possession of contraband and it is the contention that the applicant is involved in illicit drug trafficking. Learned counsel submitted that there are materials to indicate the nexus and role of the applicant in the conspiracy of financing, peddling, distribution, preparation, consumption, dealing, procurement, transportation for the purposes of narcotic drugs and psychotropic substance. My attention is invited to the criminal antecedents which the applicant has in respect of similar offence when he was found in possession of non-commercial quantity. The applicant has been enlarged on bail in that C.R.

6. I have heard learned counsel. The accusation of the prosecution is that the applicant and the accused no. 5 who is mastermind of the cartel and is the main supplier of MD is

doing his MD trafficking business through one of his main peddler i.e. the applicant. The accused no.5 filed an application for bail before the Special Court. By an order dated 21/06/2023, the accused no.5 has been enlarged on bail. It will be pertinent to refer the relevant portion of the order passed by the Special Court while enlarging the accused no.5 on bail. Paragraphs 5 to 7 of the said order read thus :

“5. The counsel for the accused has taken the Court through the reply filing by the Intelligence Officers A.K. Singh. He has pointed out that in the reply except vague and general allegations that the applicant was dealing in narcotics, there is no specific role attributed to the applicant. SPP for State has taken the Court through the complaint para 65 in particular in which it is mentioned that one of the co-accused Shariq Wali Sayed has stated that the applicant is a supplier of Mephedrone and that this Shariq Wali Sayed has sold 52 grams of Mephedrone to applicant Vijay Kumar Singh, an amount of Rs.78,000/- was paid to him through mobile number of the wife of the applicant. This role is conspicuously absent in the reply filed by the Intelligence Officer. The counsel for the accused has taken me through the statement of Shariq Wali Sayed at page 258 of the compilation as well as the statement at 278 of the compilation. In none of the statement there is mentioned of the name of the accused no.1. So also in the lists of documents there is no document which shows that any amount was transferred from the account of the wife of the applicant to any of the co-accused.

6. On going through the charge-sheet, there is nothing on record in form of Whatsapp chat or any other documents to show that any of the accused was in contact with the applicant or that there was

any transferred of money either by the applicant or any transfer of money from the account of the wife of the applicant no.1 at the instance of the applicant.

7. In such case there is no evidence which would prima facie show the involvement of the accused no.1. There are reasons to believe that the accused no.1 is not guilty of the offences. Further, it is not the case of the Intelligence Officer that the accused is having any criminal antecedents. This would lead the Court to believe that if released on bail, he would not commit offence of similar nature.”

7. Except section 67 statement of the applicant, which according to the learned counsel for the respondent no.1 demonstrates that the applicant is involved in these activities, prima facie, there is no other material placed on record to show his involvement with the other co-accused who were found in possession of the commercial quantity of contraband. Furthermore, there is nothing on record to show that order dated 21/06/2023 enlarging accused no.5 on bail has been challenged. It appears that the order dated 21/06/2023 passed by the Sessions Court has attained finality. It is the prosecution’s case that the accused no.5 is the head of the cartel who is doing his business through the present applicant. As the accused no.5 has been enlarged on bail, even the present applicant can be enlarged on bail. In any case, what is found in

possession of the present applicant is an intermediate quantity i.e. 10.2 grams of contraband MD. Though there is criminal antecedent against the applicant where he was found in possession of non-commercial quantity, that by itself should not be a factor to deprive the applicant the facility of bail in the facts and circumstances of the present case. The applicant can be enlarged on bail by imposing stringent conditions. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Khan Abusufiyan Shakil Ahmed in connection with C.R. No.NCB/MZU/CR-73/2021 registered with Narcotic Control Bureau, Mumbai Zonal Unit, shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more solvent sureties in the like amount.
- (c) The applicant shall attend the investigating Officer of Narcotic Control Bureau, Mumbai Zonal Unit once in fortnight on every first and third Tuesday of the month between 10.00 a.m. and 1.00 p.m.
- (d) 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.

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

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

(g) The applicant shall not leave Mumbai, Mumbai Suburban District without permission of the trial Court till the trial concludes.

(h) The applicant shall surrender his passport, if any, to the investigating officer.

8. The application is disposed of.

(M. S. KARNIK, J.)