

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

BAIL APPLICATION NO.1126 OF 2022

Sameer Suleman Sharma

...Applicant

Versus

1. Union of India

2. The State of Maharashtra

...Respondents

...

Mr. Saroagi with Mr. Prajot H. Jaggi, Ms Daksha Parmar and Ms Pallavi Kulkarni for the Applicant.

Mr. Shriram Shirsat with Mr. Anna Oomman for the Respondent.

Mr. S.H. Yadav, APP for the Respondent -State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 7th JUNE, 2023.

P. C. :-

1. This is an application under Section 439 of the Cr.P.C. filed by the aforesaid Applicant, who is facing trial in Special NDPS Case No.1367 of 2021 on the file of the learned Special Judge, (N.D.P.S.) City Civil and Sessions Court, Greater Bombay.

2. The case of the prosecution is that they had received information that the Applicant herein and the co-accused were dealing in illegal trade of drugs and they had stored contraband drugs at their residence. Accordingly, the residential premises of the co-accused were

searched and 165 gms of Mephedrone (MD) as well as sum Rs.2,15,000/- was recovered. In the course of the investigation the co-accused disclosed that the Applicant was also involved in procurement and sale of Mephedrone (MD). Accordingly the premises of the Applicant were searched in presence of the panchas, after complying with the statutory requirements. It is alleged that 56 gms of white powder like substance was found in the cupboard in the bedroom of the Applicant herein. The same was seized in presence of panchas. In addition sum of Rs.17,90,000/- in Indian and foreign currency was also recovered under the panchanama. The seized contraband was forwarded to the forensic laboratory. The forensic report tested positive for Mephedrone.

3. The Investigating Agency suspected that the money recovered from the cupboard of the Applicant was the income derived from the sale of drugs. Show cause notice was given to the Applicant. It is stated that the Applicant herein did not submit any explanation. Hence, an order under Section 68F(1) came to be passed and upon concluding the completion of the investigation, charge-sheet came to be filed against the Applicant and the co-accused for committing the offences as stated above.

4. Mr. Saraogi, learned counsel seeks bail mainly on the ground of non-compliance of Section 50 of the NDPS Act. He further states that no lady staff was present at the time of search. He submits that the statement of the mother of the Applicant was recorded by misrepresenting to her that such statement would benefit the Applicant.

5. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties. The records particularly the Information Note prima facie reveals that the NCB Team had received information that the Applicant herein and the co-accused were involved in illegal trade of drugs and had stored MD in their residential premises. Pursuant to the said information the premises of the accused No.1 were searched in presence of panchas and contraband (MD) weighing 165 gms was recovered. On 18/04/2021, the NCB Team, which included lady members visited the house of the Applicant. The Applicant was not present in the house. His mother, who was present, was explained the purpose of search. The premises were searched in presence of the panchas as well as the mother of the Applicant after complying with statutory requirements.

6. A perusal of the panchanama reveals that Md weighing about 56 gms and cash of Rs.2,15,000/- as well as foreign currency was recovered from the cupboard. The records prima facie reveal that commercial quantity of the contraband was recovered from the cupboard of the Applicant. The recovery of contraband coupled with the statement of the mother of the Applicant prima facie reveals that the Applicant was involved in illegal trade of drugs. The twin condition under Section 37 of the NDPS Act are not satisfied.

7. In such circumstances, the application is rejected.

(SMT. ANUJA PRABHUDESSAI, J.)