

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

CRIMINAL BAIL APPLICATION NO. 958 OF 2023

Sharfuddin Shamsuddin Shaikh

...Applicant

Versus

State Of Maharashtra

...Respondent

....

Ms. Sana Raees Khan a/w Mr. Aditya Parmar, Advocate for the Applicant.

Mrs. Anamika Malhotra, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.

DATE : 28th JULY, 2023.

PER COURT:

1. The Applicant is seeking bail in C.R. No.22 of 2019 registered with ANC Bandra Unit, Mumbai for the alleged offences punishable under Sections 8(c), 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'). The Applicant was arrested on 9th March, 2019. The case of the prosecution is that the Applicant was found in possession of 600 gms Methphedrone. On completing investigation charge-sheet was filed.

2. The previous application preferred by the Applicant was disposed off vide order dated 22nd February, 2021. By permitting the Applicant to withdraw the said application as the Court was not inclined to grant relief however, trial is expedited.

3. Learned Advocate for the Applicant submitted that the

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Applicant is in custody from 9th March 2019 i.e. for a period of about four years and four months. The trial is not concluded. The prosecution so far examine three witnesses. It is not clear as to when the trial would be over. Long incarceration affects the fundamental right of the Applicant. The Applicant is not delaying the trial. Long dates are given by the trial Court for hearing. Reliance is placed on the Roznama. Although trial was expedited by this Court, it was not concluded expeditiously. Reliance is also placed on the following decisions :

- i. Modh Muslim @ Hussain V/s. State (NCT of Delhi), decided by the Apex Court in Special Leave Petition (CRL.) No(S). 915 of 2023 dated 28th March, 2023.*
- ii. Avinash Anant Pawar @ Ajit Dada V/s. The State of Maharashtra, decided by the Apex Court in Petition for Special Leave to Appeal (Crl.) No.1452 of 2022 dated 11th August, 2022.*
- iii. MD. Raja & Anr. V/s. The State of West Bengal, decided by the Apex Court in Criminal Appeal No.1293 of 2022 dated 22nd August, 2022.*
- iv. Sanjiv Shankarrao Khade V/s. Republic of India (CBI), decided by the Apex Court in Petition(s) for Special Leave to*

Appeal (Crl.) No(s). 4265 of 2021 dated 24th August, 2021.

v. Union of India V/s. K. A. Najeeb, decided by the Apex Court, (2021) 3 SCC 713.

4. Learned Counsel for the Applicant submit that in all the aforesaid decisions bail was granted on the ground of long incarceration in custody. The Applicant cannot be detained in custody for indefinite period.

5. Whereas learned APP submitted that the case relates to the offence under NDPS Act. There are rigors of Section 37 of NDPS Act. The trial has commenced. The prosecution has examined three witnesses. The list of witnesses produced by the prosecution indicate that there are eight proposed witnesses. Three witnesses are already examined. The Applicant was found in possession of mephedrone. The decisions relied upon by the learned counsel for the Applicant are not applicable in this case as the witnesses were not examined in those cases.

6. No doubt the Applicant is in custody from 9th March, 2019. The law is well settled in the decisions relied upon by the learned counsel for the Applicant that long incarceration could be ground for bail. It is also noted that the Applicant is in custody from four years and four months. However, the list of witnesses provided by

the prosecution contains eight witnesses. Three witness are already examined. In these circumstances, it is expected that the trial Court would proceed with the matter and conclude the case by examining remaining witnesses expeditiously. Hence in the facts of this case no case for grant of bail is made out.

ORDER

- i. Criminal Bail Application No. 958 of 2023 is rejected;
- ii. The trial Court shall complete the trial expeditiously by examining remaining witnesses.
- iii. In the event, the trial is not concluded within six months from today the Applicant is granted liberty to move fresh application.

(PRAKASH D. NAIK, J.)