

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

ANTICIPATORY BAIL APPLICATION NO. 1038 OF 2023

Mr. Mohammed Sajid Abdul Aziz Shaikh	... Applicant
v/s.	
The State of Maharashtra	 Respondent

Mr. Nadeem Khan i/b. Mr. Avdhesh Kumar Kanoojiya
for the Applicant.
Mr. S.V. Gavand, APP for the State.
Mr. Sayog Amrithar, API, Santacruz Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 18th APRIL, 2023.

P. C. :-

. This is an Application under section 438 of Cr.PC. filed by the aforesaid Applicant apprehending his arrest in C.R.No.1215/2022 registered with Santacruz Police Station, Mumbai for offences punishable under sections 8(c) and 21(b) of Narcotic Drugs and Psychotropic Substances (NDPS) Act.

2. Heard learned counsel for the Applicant. He submits that the co-accused has sought to implicate the Applicant only because of previous enmity. He states that the Applicant has no criminal antecedents.

3. Per contra, learned APP states that the statement of the co-accused prima facie shows that the contraband of commercial quantity

was seized from accused no.1. The accused no.1 was taken into custody and in the course of investigation and interrogation, it is revealed that the Applicant herein is also involved in the said crime. He submits that the offence is of serious nature which affects the society at large. He submits that considering the gravity of the offence as well as the restriction imposed by section 37 of NDPS Act, this would not be a case for exercising discretion under section 438 of Cr.PC.

4. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. The material on record prima facie reveals that pursuant to the information received for sale of narcotic and contraband near SBI Bank, Juhu Tara Road, Santacruz (W), Mumbai, a trap was laid. The co-accused was apprehended and upon taking his search, 52 gms of methedrone, which is of commercial quantity, was seized from the co-accused. The co-accused was taken into custody. He has been interrogated. His statements prima facie shows that the Applicant is involved in the said offence.

6. It is true that the statement would not be admissible in the course of the evidence, but certainly police can take lead from such evidence

and investigate the crime. It is to be noted that the scheme of section 37 of NDPS Act reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied.

7. In the instant case, there is prima facie material to show the involvement of the Applicant in commission of the said crime under NDPS Act involving commercial quantity. Hence, this is not a fit case to exercise discretion under section 438 of Cr.P.C. in favour of the Applicant. Hence, the Application is dismissed.

PREETI
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(SMT. ANUJA PRABHUDESSAI, J.)