



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

BAIL APPLICATION NO.1417 OF 2023

ADNAN NASIR ANSARI ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Mr. Ganesh Gupta a/w Mr. Jamal Khan a/w Mr. Sahil
Ghorpade a/w Mr. Aditya Ambokar for the applicant.
Mr. P. H. Gaikwad, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : AUGUST 24, 2023.

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP for the State.
- 2.** This is an application for bail in respect of the offence punishable under Sections 8(c), 21(a), 22(b), 22(c), 29 of the Narcotic Drugs and Psychotropic Substances, 1985 (hereafter "NDPS Act", for short) and under Sections 3, 5, 14 of the Foreigners Act, 1946 registered vide C.R. No.5 of 2022 with Nagapada Police Station, Mumbai. The applicant is the accused No.3. The applicant was arrested on 06.02.2022.

3. This Court by an order dated 31.07.2023 had enlarged the co-accused No.1–Amit Idris Qureshi on bail. The order reads thus :-

"1. This is an Application under section 439 of Criminal Procedure Code, 1973 filed by the aforesaid Applicant who is facing trial in NDPS Special Case No.853/2022 pending on the file of learned NDPS Special Judge, City Civil & Sessions Court, Greater Mumbai.

2. The aforesaid case arises from Crime No.5 of 2022 registered with Nagpada police station, Mumbai for offences punishable under sections 8(c), 21(a), 22(b), 22(c), 29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, and sections 3, 5 14 of the Foreigners Act, 1946.

3. It is the case of the prosecution that on 1 February 2022, while the police team was on patrolling duty, they saw the Applicant moving suspiciously. They accosted him and on taking his search, they recovered intermediate quantity of cocaine weighing about 5.00 gram and M.D. weighing about 10 gram. The contraband was seized in presence of panchas.

4. It is alleged that the Applicant disclosed that he had purchased the contraband from accused no.2 – K.C. alias Jidofar Vincent Okofor who is a Nigerian National. Accused no.2 - Amit Idris Qureshi was apprehended and 65 MD was recovered from his possession. During the course of investigation, the Applicant disclosed the name of accused no.3 – Adnan Nasir Ansari who was allegedly involved in the purchase and sell of MD. It is submitted that no substance was recovered from accused no.3. All the three accused were taken in custody and remanded from time to time. Upon conclusion of investigation, chargesheet has been filed for commission of offences as stated above.

5. The Bail Application filed by the Applicant has been rejected by the learned NDPS Special Judge, City Civil & Sessions Court, Greater Mumbai mainly on the ground that the Applicant had informed that he had purchased the narcotic from accused no.2 from whom contraband of

commercial quantity has been recovered. The learned Special Judge has held that the material on record prima facie shows that the Applicant nos.1 and 2 had abetted in commission of offence and in view of section 37 of the NDPS Act, the Applicant is not entitled for bail.

6. Heard Mr. Mithilesh Mishra, learned counsel for the Applicant and Ms. A. A. Takalkar, learned APP for the Respondent -State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

7. It is not in dispute that the Applicant was not in possession of contraband of commercial quantity. It is the case of the prosecution that the Applicant has abetted the commission of offence. It is stated that the Applicant used to purchase the contraband from accused no.2 from whose possession the contraband of commercial quantity has been seized. The statements of the witnesses do not prima facie indicate that the Applicant used to purchase the contraband from accused no.2. On the contrary, the statements of these witnesses prima facie indicate that the Applicant would phone to accused no.3 and he would come and supply the contraband. It is stated that no contraband was seized from accused no.3. It is the case of the prosecution that the Applicant had given information that he used to purchase the contraband from accused no.2. No such information was taken down in writing and there is no compliance of section 42. Prima facie there is no material or record to indicate that the Applicant had abetted commission of offence.

8. The Applicant has no criminal antecedents. The contraband seized from him is not of commercial quantity. The Applicant is in custody from 1st February 2022. Considering the large pendency, there are no chances of the trial concluding within a reasonable time. Hence in my considered view, this is a fit case to exercise discretion under section 439 of the Criminal Procedure Code, 1973."

4. The applicant is entitled for enlargement on the ground of parity. Learned APP submits that the applicant

was in constant touch with accused No.1, however, I find that there is no recovery from the present applicant. The contraband seized is not a commercial quantity. There are no criminal antecedents reported against the applicant. The rigours of Section 37 do not apply in the present case. The investigation is complete. The charge-sheet has been filed. There are no criminal antecedents reported against the applicant. Hence, the following order :-

ORDER

- (i) The Applicant –Adnan Nasir Ansari who is facing trial in NDPS Special Case No.853 of 2022 pending on the file of learned NDPS Special Judge, City Civil & Sessions Court, Greater Mumbai is ordered to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or two solvent sureties in the like amount;
- (ii) The Applicant shall report to DCB, CID, Unit III, Mumbai, once in three months, on the first Monday of the month, till framing of the charge;
- (iii) The Applicant shall attend the hearing before the Special Court on every date, unless exempted;
- (iv) The Applicant shall not leave the country without prior permission from the Court;

(v) The Applicant shall surrender his passport to the Investigating Officer;

(vi) The Applicant shall not interfere with the complainant or the other witnesses, or tamper with the evidence in any manner;

(vii) The Applicant shall keep the Investigating Officer informed of his permanent as well as temporary address, if any, and his contact details, and/or change of residence or mobile details from time to time.

5. The application is disposed of.

(M. S. KARNIK, J.)