



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

BAIL APPLICATION NO. 1595 OF 2023

MOHAMMED NAUMAN SHAHID QURESHI ..APPLICANT

VS.

THE STATE OF MAHARASHTRA ..RESPONDENT

Adv. Taraq Sayed a/w Adv. Ashwini Achari a/w Adv. Alisha
Parekh for the Applicant.

Mr. N. B. Patil, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 29, 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(c), 27(A), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter "NDPS Act", for short) registered on 28/09/2021 vide C.R. No.86 of 2021 with Anti Narcotics Cell, Bandra Unit, Mumbai.

3. On 27/09/2021 at around 23.55 hours, the officers of the respondent while on patrolling duty apprehended the applicant outside Wadhwan Construction Gate, TATA Vasahat Road, BKC, Mumbai. The applicant was found carrying a golden colour bag in his hand. Under reasonable suspicion, a search of the bag of the applicant was conducted which allegedly led to the recovery of 105 gms of contraband Cocaine. In view of the recovery, the applicant was placed under arrest on 28/09/2021 at 04.30 hours for the alleged offences punishable under Section 8(c), 21(c), 27A of the NDPS Act. Learned counsel for the applicant has invited my attention to the panchnama and the materials on record including the relevant printouts of CCTV footage. According to learned counsel, the officers of the respondent were seen keeping a watch on the applicant and also seen conducting a search of the Motorbike of the applicant which was parked at his residence. It is submitted that the officers had not only searched the motorbike of the applicant but had also searched the house of the applicant where nothing was found. This according to the learned

counsel for the applicant was just a few hours prior to the alleged recovery from the applicant. Learned counsel for the applicant submitted that the applicant was manipulated and a false case had been cooked up by the officers of the respondent. Learned counsel for the applicant further submitted that on the date of the raid, the authorised officer had not signed the attendance register in his office and in fact was absent from duty. It is then submitted that the applicant has been in custody for almost a period of 2 years with no possibility of trial commencing and concluding any time soon. It is also submitted that the applicant is suffering from psychiatric illness and he is on medication at present in the prison. It is also submitted that if granted bail the applicant is even willing to report to the Investigating Officer every alternate day.

4. Learned APP vehemently opposed the application and submitted that all the contentions raised by the learned counsel for the applicant are subject of consideration at the time of the trial. It is further submitted that the applicant was found in possession of commercial quantity of

contraband Cocaine. Learned APP submitted that the applicant is getting proper treatment in prison and the medical report itself reveals that the applicant is conservatively managed on the medication. It is further submitted that the applicant had filed a Writ Petition No. 1713 of 2022 for quashing on the very same grounds urged by the learned counsel for the applicant viz. (a) That the applicant is innocent and has been falsely framed in the instant matter and (b) Even if the case of the prosecution is considered to be true, the officers of the respondent while on patrolling duty after enquiring with the applicant had got the information that he was allegedly carrying contraband. It is pointed out that by order dated 18/07/2023, the aforesaid Writ Petition came to be withdrawn. It is further submitted that the period of 2 years can not be said to be a long period to claim enlargement on bail on the ground of long incarceration.

Considerations:-

5. Having heard the learned counsel for the applicant, I am of the view that the present application deserves to be

allowed for the following reasons. Though the learned counsel for the applicant was at pains to urge that the applicant is falsely implicated, I refrain from making any observations on such submission which are matters for consideration at the time of trial on the basis of evidence adduced. In any case, any observation made by me on these aspects will have the effect of influencing the trial. Considering what is found in possession of the applicant is a commercial quantity, for seeking enlargement on bail, the applicant will have to satisfy the twin conditions enumerated by Section 37 of the NDPS Act. The applicant was found in possession of the contraband Cocaine which was 5 gms more than the minimum of the commercial quantity prescribed. The quantity is no doubt a commercial quantity. Learned counsel submitted that such quantity is just 5 gms more than the minimum of the commercial quantity. In my opinion, this is one of the circumstance I am inclined to consider for forming an opinion whether the pre-trial period of incarceration can be said to be long in the facts of the present case.

6. The applicant was arrested on 27/09/2021 and is now in custody for more than 2 years. There is absolutely no progress in the trial and it is obvious that the trial is likely to take a long time to conclude. There are no criminal antecedents reported against the applicant. The applicant's medical report reveals that the applicant is a known case of psychiatric illness of Lumber spondylitis. The Chief Medical Officer of Mumbai Central Prison while commenting on the health status of the applicant indicated that the applicant is referred to the Sir J.J. Hospital on multiple occasions. The fellow inmates of the applicant have complained about the aggressive behaviour of the applicant. The patient suffers from anxiety, irritability, impulsive behaviour and sleeplessness. He also complains of lower back ache radiating to legs. He is conservatively managed on medication at present. Medical advice is for psychologist counselling and treatment as per the advice of a psychiatrist.

7. In the facts and circumstances of the present case, also considering the medical history of the applicant on

record coupled with the period the applicant has spent in custody as an undertrial with no possibility of trial concluding any time soon, this is a case where the rigours of first of the twin conditions under Section 37 of the NDPS Act, in my opinion, can be overcome. As indicated earlier, there are no criminal antecedents reported against the present applicant and therefore, prima facie, in my opinion, the applicant is not likely to commit any offence while on bail since I propose to impose stringent conditions while enlarging the applicant on bail. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Mohammed Nauman Shahid Qureshi in connection with C.R. No.86 of 2021 registered with Anti Narcotics Cell, Bandra Unit, shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more local sureties in the like amount.
- (c) The applicant shall attend the Investigating Officer of Anti Narcotics Cell, Bandra Unit, on every Wednesday, Saturday and Sunday of the month between 4.00 p.m. and 6.00 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 not leave the jurisdiction of Mumbai/Mumbai Suburban District without permission of the trial Court.

(g) The applicant shall attend the trial regularly.

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

8. The application is disposed of.

(M. S. KARNIK, J.)