

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

BAIL APPLICATION NO. 1194 OF 2023

Imran Salim Shaikh

.... Applicant

v/s.

Narcotics Control Bureau, Mumbai
and anr.

.... Respondents

Mr. Taraq Sayed a/w. Mr. Advait Tamhankar, Ms. Ashwini
Achari and Ms. Alisha Parekh i/b. Mr. Rohit Sawant for the Applicant.
Mr. Rahul Tiwari for Respondent No.1-NCB.
Mr. S.V. Gavand, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 26th JULY, 2023.

P. C. :-

. This is an Application under section 439 of Cr.PC. filed by the aforesaid Applicant who is facing trial in NDPS Special Case No.1190/2021 pending on the file of NDPS Special Judge, Greater Mumbai. The said case arises from C.R.No.28/2021 registered with Narcotics Control Bureau, Mumbai Zonal Unit for the offences punishable under sections 8(c) r/w. Sections 22(c), 27A and 29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act.

2. Heard learned counsel for the Applicant, learned counsel for Respondent No.1-NCB and learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel

for the respective parties.

3. The case of the prosecution in brief is that the specific information was received on 27/03/2021, at about 03:30 hours, that the Applicant and the accused no.2 were residing in flat no.1203, Millenium Heritage, B wing, S.V. Road, Andheri (W), Mumbai and that they were in possession of narcotic drugs. The information was reduced into writing and the premises were raided on 28/02/2021 between 06:00 to 08:00 a.m. It is alleged that mephedrone weighing about 54 grams which is a commercial quantity was recovered from the cupboard of flat no.1203. The said contraband was seized in presence of panchas. The sample was drawn and forwarded to CFSL for analysis. After complying with mandatory provisions, the sample tested positive for mephedrone. Hence, the complaint came to be filed against Applicant and others for offences as stated above.

4. The records reveal that though the specific information was received on 27/03/2021 at about 03:30 hours, the Investigating Agency waited till 28/03/2021 to raid the premises. It is also stated that the premises were raided at about 06:00 a.m. which was before sunrise. It is to be noted that no authorization was obtained and there was no compliance of sections 41 and 42 of NDPS Act.

5. Be that as it may, the records reveal that the flat no.1203 was given on leave and license basis to Bliss Enterprises of which M/s. Aasumi Mehta is one of the partners. The statement of witnesses prima facie reveals that flat no.1202 was booked by one Farhan Salim Shaikh on 26/03/2021 for one day which was extended till 27/03/2021. It is stated that subsequently said Farhan Shaikh and Iqra shifted to flat no.1203. They were suppose to check out on 28/03/2021 at about 11:00 a.m. It is stated that Samira Shahjahan Shaikh, Ejaz Mohd. Ansari, Mohd. Fahad Abdul Samad Patel and Sana Ashraf Shaikh who were friends of Iqra were also occupying the said premises. It is thus evident that the premises from which the contraband was seized, was occupied by Farhan Shaikh and others.

6. The statement of Aasumi Mehta does not prima facie indicate that the Applicant was one of the occupants of the said premises. Learned counsel for the Respondent No.1 contends that the Applicant had handed over the keys of the cupboard from which the contraband was recovered. It is not in dispute that keys of cupboard have not been seized. There is no material on record to indicate that the Applicant had booked the flat no.1203 or that he had made payment in respect of the said room. It is also to be noted that though the panchanama was concluded at about

08:00 a.m., the Applicant was arrested only at about 09:00 p.m. The delay in the arrest of the Applicant is also not explained.

7. At the time of the incident, the Applicant is stated to be 20 years of age. He is in custody since last two years. The charge is not yet framed and the trial is not likely to conclude soon. Considering the above facts and circumstances, rigors of section 37 would not be applicable. Hence, the Applicant is entitled for bail.

8. In view of the above, the Application is allowed on the following terms and conditions :-

- (i) The Applicant who is facing trial in NDPS Special Case No.1190/2021 pending on the file of NDPS Special Judge, Greater Mumbai arising out of C.R.No.28/2021 registered with Narcotics Control Bureau, Mumbai Zonal Unit, is ordered to be released on cash bail in the sum of Rs.50,000/- for a period of four weeks ;
- (ii) The Applicant shall, within the said period of four weeks, furnish PR. bonds in the sum of Rs.50,000/- with one or two solvent sureties in the like amount ;

- (iii) The Applicant shall report to Narcotics Control Bureau, Mumbai Zonal Unit once in three months on every 1st Monday of the month between 11.00 a.m. to 02.00 p.m. till framing of the charge ;
- (iv) The Applicant shall not interfere with the prosecution witnesses and shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case in any manner ;
- (v) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.
- (vi) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

9. Bail Application stands disposed of in above terms.

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Date: 2023.07.28
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(SMT. ANUJA PRABHUDESSAI, J.)