



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

BAIL APPLICATION NO.1328 OF 2023

VASIM ABDUL SATTAR SHAIKH

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Ms. Megha Bajoria h/f Mr. Mandar Goswami, for the Applicant.

Mr. P. H. Gaikwad, APP for the State.

PSI- Mr. Sandip Nagare, Kasa Police Station, District- Palghar present.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 3, 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), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act" for short) registered on 12/03/2019 vide C.R. No.42 of 2019 with Kasa police station, Palghar.
- 3.** The applicant was arrested on 12/03/2019. The applicant is the accused no.2. There are in all 2 accused. The co-accused no.1 - Umer Usman Khan was enlarged on bail by an order of this Court on 21/02/2023 in Bail

Application No. 3521 of 2019. For convenience and as the said order will cover the case of the present applicant as well, the same is reproduced as under:

“2. This is an application for bail by the applicant-Umer Usman Khan in connection with C.R. No.42 of 2019 dated 12/03/2019, registered with Kasa Police Station, Palghar, under sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS Act” for short).

3. The First Information Report came to be registered on 12/03/2019. Mr. Surve, Police Sub-Inspector (“PSI” for short) received secret information from the informant on 11/03/2019 that the applicant would be carrying a contraband substance in white Swift Desire car. Accordingly, PSI Surve who received the information communicated the same to his superior officer Mr. Kadam, Police Inspector (“PI” for short). In the station diary, an entry is made at 12.45 hours on the say of PI Kadam that PSI Surve informed him that based on secret information the applicant would be carrying contraband in a white Swift Desire car. This information was reduced in writing in the station diary on the say of PI Kadam though the information was actually received by PSI Surve.

4. Learned counsel for the applicant contends that there is a breach of the provision of section 42 of the NDPS Act, as the information has not been reduced in writing by PSI Surve who was the recipient of the secret information. According to him, the station diary entry is recorded as per the say of PI Kadam who was not the recipient of the secret information. He submits that entry in the station diary cannot be said to be a writing within the meaning of section 42(2) of the NDPS Act.

5. On record is produced a communication dated 11/03/2019 addressed by PI Kadam to his immediate superior i.e. the Deputy Commissioner of Police, (Detection) Crime Branch, that based on

a secret information, the applicant would be carrying contraband Mephedrone (M.D.) in a white Swift Desire car for sale. The applicant was arrested on 12/03/2019 and found in possession of the 200 gms of M.D.

6. There is nothing on record to indicate that the information received by PSI Surve has been reduced by him in writing and the copy of such information is forwarded to the immediate superior officer in compliance with sub-section (2) of section 42 of the NDPS Act. Assuming that the information recorded in the station diary as per the say of PI Kadam could be said to be in compliance with section 42(2) of the NDPS Act, even then the copy thereof is not sent to his superior officer. No doubt, the superior officer to PI Kadam has been informed about the information but the same cannot be said in compliance with sub-section (2) of section 42 of the NDPS Act. On the ground that there is a breach of section 42 of the NDPS Act, I have reasons to believe that the rigours of section 37 of the NDPS Act can be overcome in the present case."

4. The applicant's case is at par with the co-accused. The applicant is now in custody for more than 4 years and 7 months. There is one antecedent reported against the applicant which is an offence under IPC. In my opinion, the antecedent should not come in the way of the applicant in getting the facility of bail. The investigation is complete. The charge-sheet is filed. It is unlikely that the applicant will commit a similar offence while on bail. The charge has not yet framed. The trial is likely to take a long time to

conclude. The application is therefore even on the ground of parity, enlarged on bail. Hence, the following order :-

ORDER

(a) Applicant- Vasim Abdul Sattar Shaikh in connection with C.R. No.42 of 2019, registered with Kasa Police Station, Palghar, 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;

(b) The applicant shall report to the concerned police station twice a month i.e. on the first and third Saturday between 11.00 a.m. and 1.00 p.m, commencing November-2023;

(c) 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;

(d) 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;

(e) The applicant shall not leave the area of Mumbai/ Mumbai Suburban District and Thane District without prior permission of the trial Court.

(f) The applicant shall attend every date of the trial.
The applicant shall co-operate with the trial Court and

shall not seek unnecessary adjournments.

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

5. The application is disposed of.

(M. S. KARNIK, J.)