



Diksha Rane

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

BAIL APPLICATION NO.1310/2023

MOHD MUSTAFA SADIKALI SHAIKH ..APPLICANT

VS

STATE OF MAHARASHTRA ..RESPONDENT

Adv. Taraq Sayed i/b. Adv. Hafeezur Rahman for the
applicant.

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

PSI Madan Waghmare, Khar Police Station.

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 Section 8(c), 21, 22, 29 of the Narcotic
Drugs and Psychotropic Substances Act, 1985 (hereafter
“NDPS Act”, for short) registered on 8/8/2019 vide C.R.
No.148/2019 with Khar Police Station, Mumbai.

3. There are in all two accused. The applicant is the
accused no.2. The respondent received the specific
information that the accused no.1 is carrying contraband in

his four-wheeler. The accused no.1 was driving the four-wheeler. The accused was searched on 8/8/2019. From the accused no.1, 8 gm cocaine was recovered. A quantity of 368 gm Mephedrone (MD) was found in the dashboard of the vehicle. The vehicle belongs to and is of the ownership of the accused no.1.

4. Learned APP while opposing the application for bail submits that the applicant was travelling in same vehicle and therefore, he can be said to be in conscious/constructive possession of the contraband. It is further submitted by learned APP that there is a previous criminal antecedent reported against the applicant of the year 2019 itself when the applicant was found in possession of 23 gms of the MD. The applicant was, however, enlarged on bail in that offence as the applicant was found in possession of non-commercial quantity of the contraband. Learned APP submitted that while on bail the present offence was committed by the applicant. It is submitted that considering the past history of the applicant, the applicant should not be enlarged on bail. It is further submitted that as the applicant was found in possession of commercial

quantity, rigours of Section 37 will apply.

5. The applicant was arrested on 8/8/2019 and is in custody for more than four years and two months. The charge has not been framed and therefore, the trial is likely to take a long time to conclude. On the personal search of the applicant nothing was found. Moreover, the applicant was found travelling in the car which belonged to the accused no.1. The contraband was found on the person of the accused no.1 and in the compartment of the dashboard of the vehicle. There is no material to indicate that the applicant was involved with the accused no.1 in the dealing of the contraband seized monetarily or otherwise. This observation is made by me particularly in the context and because the applicant is in custody for more than four years and hence in my opinion, considering the long period of incarceration and in the facts and circumstances of the present case, the applicant can be enlarged on bail. These observations not to influence the trial Court.

6. The applicant was travelling in a vehicle which had commercial quantity of the contraband. For the reasons stated hereinbefore, in my opinion, the rigours of Section 37

of the NDPS Act can be overcome so far as the present applicant is concerned. I am satisfied that the applicant is not likely to commit any offence while on bail as I propose to impose stringent conditions. The investigation is complete. The charge-sheet has been filed. The applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Mohd Mustafa Sadikali Shaikh in connection with C.R. No.148/2019 registered with Khar Police Station, Mumbai, shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one or more local sureties in the like amount.
- (c) The applicant shall attend the Investigating Officer of Khar police station once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m. till the trial concludes.
- (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) Except for attending the trial and for the purpose of reporting to the Investigating Officer, the applicant shall not enter the area of Mumbai/Mumbai Suburban District after being released on bail, till the trial concludes or subject to modification of the condition by the trial Court.

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

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

7. The application is disposed of.

(M. S. KARNIK, J.)