

DIKSHA
DINESH
RANE

Digitally signed by
DIKSHA DINESH
RANE
Date: 2023.01.20
18:07:33 +0530

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

BAIL APPLICATION NO.1704/2022

SHAHNOOR HAMID PATEL

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Rajender Singh S. a/w. Adv. Soniya Singh a/w. S. Francis
for the applicant.

Mr. S. V. Gavand, APP for State.

PSI Palve, ANC, Ghatkopar.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 20, 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(b), 22(c), 29 of the
Narcotic Drugs and Psychotropic Substances Act, 1985
(hereafter 'NDPS' for short) registered vide First Information
Report (FIR) No.64/2021 with ANC, Ghatkopar Unit, Mumbai.

3. The applicant was arrested on July 27, 2021 on the
basis of the statement of the accused no.1. The applicant is
the accused no.2. The accused no.1 was found in possession

of 15 gms of Mephedrone (MD). The accused no.1 named the accused no.2. The premises of the accused no.2 came to be raided. From the possession of the applicant (accused no.2) a quantity of 30 gms of MD was seized. The applicant informed the raiding party that the psychotropic substance was procured from the accused no.3 who is a Nigerian National. From the accused no.3 quantity of 500 gms of MD came to be recovered.

4. Though what is recovered from the applicant is not a commercial quantity but an intermediate quantity, learned APP submitted that the prosecution having applied Section 29 of the NDPS Act, the quantity which is found from the accused no.3 will have to be regarded as commercial quantity even qua the accused nos. 1 and 2 as they are part of the same supply chain.

5. The applicant was arrested on July 27, 2021 and is in custody for the last more than one year and five months. The trial is not likely to conclude any time soon.

6. My attention is invited to the order dated December 16, 2022 passed by the Hon'ble Supreme Court in the case

of **Jitendra Jain v/s. NCB & Anr.**¹. The said order reads thus: -

O R D E R

The prayer in this Special Leave Petition is to release the Petitioner on bail in a case registered under Sections 8 read with Section 20(b)(ii)B, 27, 27A and 29 of the N.D.P.S. Act vide CR No.16/2020 dated 18-12-2020 registered at Police Station, Narcotics Control Bureau, Mumbai Zonal Unit, Mumbai.

We have heard learned counsel appearing on behalf of the petitioner as well as learned Additional Solicitor General appearing on behalf Respondent No.1.

Though it is a case of commercial quantity and allegations levelled against the petitioner are serious in nature, but having regard to the fact that he is in custody for 2 years and conclusion of trial will take time, we are inclined to release the petitioner on bail.

The petitioner is, accordingly, ordered to be released on bail, subject to his furnishing bail bonds to the satisfaction the trial Court.

The Special Leave Petition is disposed of in the above terms.

7. Whether the present is a case where Section 29 of the NDPS Act can be invoked as against the accused no.2 will be a subject matter for consideration before the trial Court as admittedly what was found from the accused no.2 is an intermediate quantity and not a commercial quantity. However, considering the fact that the applicant is in custody for more than one year and five months and the

¹ SLP (Crl) No.8900/2022 order dtd. 16/12/2022.

trial is not likely to conclude any time soon and as the investigation is complete and the charge-sheet has been filed, the applicant can be enlarged on bail subject to imposing stringent conditions. Hence the following order.

ORDER

(a) The application is allowed.

(b) The applicant- Shahnour Hamid Patel in connection with FIR No.64/2021 with ANC, Ghatkopar Unit, Mumbai, shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one or more sureties in the like amount.

(c) The applicant shall report to the Investigating Officer of the concerned police station once in a week on every Saturday, between 11.00 a.m. and 1.00 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 till the trial is over.

8. The application is disposed of.

(M. S. KARNIK, J.)