



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

BAIL APPLICATION NO. 1332 OF 2023

NASRUDDIN ALI MOHD. ALI @
NASIR CHATAI @ NASIR KALIYA

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Zoheb Shaikh for the Applicant.

Ms. Veera Shinde, APP for the State.

PSI Palve, ANC, Ghatkopar, Mumbai.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 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), 22(c) and 29 of the of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter 'NDPS' for short) registered on 27/4/2021 vide C.R. No.39/2021 with Anti-Narcotic Cell, Ghatkopar, Mumbai.
- 3.** On 25/1/2022, pursuant to information received by the respondent, the accused nos.1, 2 and 3 came to be arrested. The accused no.1 was found in possession of 400

grams of Mephedrone (MD), the accused no.2 was found in possession of 300 grams of MD and the accused no.3 was found in possession of 290 grams of MD. During the course of the investigation and while in custody, the accused nos.2 and 3 in their statements pointed out that the MD found with them which is a commercial quantity was procured from the present applicant.

4. It is the submission of learned APP that apart from the fact that the accused nos.2 and 3 have named the applicant as the supplier of MD, even the applicant in his statement has stated that MD was supplied to the accused nos.2 and 3 by him. Learned APP therefore, vehemently opposed the application. It is further the contention of learned APP that there are several antecedents reported against the applicant.

5. The criminal antecedents at Item Nos.1 to 11 are in respect of bodily offence. Antecedents at Item Nos. 12 and 13 are under NDPS Act of the year 2007 and 2008. The applicant has been acquitted in respect of the antecedent at Item No.14 which is under NDPS Act in respect of C.R.No.250/2007 of Anti-Narcotic Cell, Worli Unit, Mumbai.

6. The applicant was arrested on 25/1/2022 and now is in custody for more than one year and ten months with no possibility of the trial concluding any time soon. The applicant was not found in possession of the contraband. However, that cannot by itself be a factor entitling the applicant's enlargement on bail. Whether the twin conditions laid down in Section 37 of the NDPS Act are satisfied will have to be considered on the basis of the materials on record. The materials on record against the applicant are the statements of the co-accused and the statement of the applicant himself.

7. Learned counsel for the applicant submitted that there are no corroborative materials in support of the statements of the accused and that of the applicant which justifies his continued incarceration as an undertrial. It is further submitted that the applicant is in custody for more than one year and ten months with no possibility of the trial concluding any time soon.

8. Learned APP made an attempt to submit that as the applicant and the other accused Nos.2 and 3 are personally known to each other, the question of any corroborative

material in support of the statements of the accused Nos.2 and 3 will not arise.

9. However, in the facts of the present case, in my opinion, the applicant can be enlarged on bail by imposing stringent conditions. The criminal antecedents, in my opinion, should not be a factor to deprive the applicant the facility of bail considering that two of the criminal antecedents under the NDPS Act, are of the year 2007 and 2008.

10. Taking an overall view of the matter I am of the opinion that considering that the applicant is in pre-trial custody for more than one year and ten months with no possibility of the trial concluding any time soon coupled with the fact that there is absolutely no material on record to corroborate the statements of the applicant and the co-accused, in the facts and circumstances of the present case I am inclined to enlarge the applicant on bail being satisfied that the twin conditions set out by Section 37 of the NDPS Act are satisfied.

11. The investigation is complete. The charge-sheet has been filed. Further custody only will be by way of a pre-trial

punishment in the facts and circumstance of the case. The applicant will face the consequences post-trial if found guilty. The applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Nasruddin Ali Mohd. Ali @ Nasir Chatai @ Nasir Kaliya in connection with C.R. No.39/2021 registered with Anti-Narcotic Cell, Ghatkopar, Mumbai 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 the police station which is nearest to the place of his residence once every week on Sunday between 11.00 a.m. and 1.00 p.m. till the trial concludes.
- (d) Except for attending this trial and other cases and for the purpose of reporting to the Investigating Officer, the applicant shall not enter the areas of Mumbai/Mumbai Suburban District, Thane District and Palghar District till the trial concludes.
- (e) On being released on bail, the applicant shall furnish his contact number and residential address while residing out of these Districts to the Investigating Officer and shall keep him updated, in case there is any change.
- (f) The applicant shall intimate the investigating officer two days in advance about the dates of hearing when he is required to enter these areas.
- (g) 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.

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

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

(j) The applicant shall not leave the State of Maharashtra without permission of the trial Court.

12. The application is disposed of.

13. It is made clear that the above observations are *prima facie* in nature limited to a decision of this bail application and shall not influence the trial Court.

(M. S. KARNIK, J.)