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

BAIL APPLICATION NO. 2077 OF 2022

Karla Pinto Iris

.Applicant

Vs.

The State of Maharashtra

.Respondent

Mr. Khushal Parmar i/b. Ms Arohi Majrekar, Advocate, for the Applicant

Mr. S. V. Gavand, APP, for the Respondent - State

Mr. Gaonkar, PSI, Amboli Police Station present

CORAM : ANUJA PRABHUDESSAI, J.

DATE : 02.08.2023

P. C.

. By this Application filed under Section 439 of the Code of Criminal Procedure, the aforesaid Applicant seeks enlargement on bail in Special NDPS Case No. 134 of 2019 pending on the file of the learned Special Judge (NDPS), Greater Mumbai. The said case arises from C. R. No. 38 of 2019 registered with Amboli Police Station for the offences punishable under Sections 8(c), 22(c) & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS' Act).

2. Heard Mr. Parmar, learned counsel for the Applicant and Mr. Gavand, learned APP for the Respondent - State. I have

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perused the record and considered the submissions advanced by learned counsel for the respective parties.

3. The case of the prosecution is that on 09.02.2019, the Police Inspector – Daya Nayak had received secret information that three Nigerian nationals were likely to come near Mourya Landmark on 09.02.2019 between 20.30 hours and 21.30 hours for sale of Cocaine. The said information was noted down and forwarded to the superior officer. The presence of the panchas was secured and a trap was led. It is alleged that the Applicant arrived at the place of the incident on 09.02.2019 at about 21.50 hours. They were accosted and 225 grams of Cocaine was recovered from the purse of the Applicant herein. The sample was drawn. The contraband was seized in presence of the panchas after complying with the requisite provisions of the NDPS Act.

4. It is not in dispute that the prosecution has not complied with the provisions under Section 52A of the NDPS Act. In the case of *Simranjitsingh Vs. The State of Punjab, RCR 2022(4) Cri. 462*, the Apex Court set aside conviction for non-compliance of the Section 52A of the NDPS Act. The Apex Court

relied upon the decision in *Union of India Vs. Mohanlal & Anr., (2016)3 SCC 379* and re-iterated that there is no provision under the NDPS Act that mandates taking of a sample at the time of seizure. It was observed that drawing samples from all packets at the time of seizure is not in conformity with the law laid down in the case of *Mohanlal*. The same creates a serious doubt about the prosecution case that substance recovered was a contraband. In the instant case, the samples were not drawn in presence of the Magistrate and have not been certified by the Magistrate. Non-compliance of the mandate under Section 52A prima facie makes the recovery suspicious. The Applicant is a lady. She is in custody for almost five years. It is stated that charge is not yet framed. In such circumstances, it is evident that there is no possibility of the trial concluding within a reasonable period. In *Rabi Prakash Vs. The State of Odisha* in *Special Leave to Appeal (Cri.) No. 4169 of 2023*, the Hon'ble Supreme court has observed that "The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

5. Under the circumstances and in view of directions of the Supreme Court, the Application is allowed on the following terms & conditions :-

O R D E R

(i) The Applicant is ordered to be enlarged on bail on furnishing P. R. Bond in the sum of Rs. 1,00,000/- with one or two solvent sureties in the like amount;

(ii) The Applicant shall surrender her passport before the investigating officer and shall not leave the country without prior permission of the Special Court;

(iii) The Applicant shall report to the investigating officer of Amboli Police Station once in two months on every 1st Monday of the month between 11.00 a. m. and 02.00 p. m. till framing of the charge;

(iv) The Applicant shall furnish her permanent address, local address as well as all other contact details to the investigating officer of Amboli Police Station as well as to the Special Court.

6. The Application stands disposed of.

(ANUJA PRABHUDESSAI, J.)