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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2879 OF 2021

Vivek Tulsidas Lulla ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Ayaz Khan alongwith Mr. Mithilesh Mishra instructed by Mr. Raju Mate for the Applicant.

Mr. Amit Palkar, APP for the State.

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CORAM : N.R. BORKAR, J.

DATED : 30 JANUARY 2023

P.C. :-

. This is an application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of bail.

2. The applicant came to be arrested in Crime No. 1071 of 2020 registered at Chaturshrungi Police Station, Pune for the offences punishable under Sections 8(c), 21(b), 22(B), 29 of the Narcotic Drugs and Psychotropic Substances Act.

3. According to the prosecution, on the date of alleged incident, which took place on 11 July 2020, the applicant and co-accused were apprehended as their activity was found to be suspicious. It is alleged that

during their search they were found to be in possession of 55.450 gm. of mephedron powder.

4. I have heard the learned Counsel for the applicant and the learned APP for the State.

5. The learned Counsel for the applicant submits that the applicant is in jail for about 2 & ½ years. It is submitted that there is a non-compliance of Section 50 of the NDPS Act.

6. On the other hand, the learned APP submits that it is a case of chance recovery. It is submitted that earlier also the applicant was found to be involved in similar crime.

7. The learned Counsel for the applicant has placed on record a copy of the judgment passed by the learned Special Judge in NDPS Special Case No.37 of 2018 in relation to the earlier crime registered against the present applicant. Paragraph 34 of the said Judgment reads thus :

“34. Therefore, from the aforesaid defence evidence, it appears that after the C.D.R. location of the mobile phone of the accused were produced on record, the prosecution made out new story and examined the PW-10 P.C. Shri Dhole, though, earlier his name was not cited as a witness in the charge-sheet. His statement was also recorded by P.S.I. Shri Khandagale on 30/08/2018, after examination of two witnesses in this matter. Further as discussed in the aforesaid paragraphs, in the seizure panchanama as well as in the F.I.R., no such fact was mentioned. Thus, the prosecution has not come forward with clean hands. The aforesaid defence

evidence indicates that the accused as well as A.P.I. Shri Khaire were in the A.N.C. Bandra Unit on 22/08/2017 between 9.00 p.m. to 11.00 p.m. Therefore, the story of conducting raid against the accused No.1 on the ground behind Rangsharda Natyagruh at Bandra West, Mumbai, is not believable at all.”

8. The applicant is in jail for about 2 & ½ years. The trial is not likely to conclude in near future. Considering the overall facts and circumstances, I am inclined to release the applicant on bail. Hence, the following order is passed :

- (i) Application is allowed.
- (ii) The applicant - Vivek Tulsidas Lulla be released on bail in Crime No. 1071 of 2020 registered at Chaturshrungi Police Station, Pune for the offences punishable under Sections 8(c), 21(b), 22(B), 29 of the Narcotic Drugs and Psychotropic Substances Act on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
- (iii) The applicant shall attend the concerned police station once in a month, i.e., on first Saturday between 11:00 a.m. to 2:00 p.m. till conclusion of the trial.

(N.R. BORKAR, J.)