

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3075 OF 2021**

Nabi Kasim Shaikh @ Naish

..Applicant

VS.

The State of Maharashtra

..Respondent

Adv. Ayaz Khan for the Applicant.

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

Mr. Shivaji Kanade, PSI, Crime Branch, Unit-V, Thane City present.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 21, 2023

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.

2. This is an application for bail by the applicant-Nabi Kasim Shaikh @ Naish in connection with C.R. No.II-113 of 2020 dated 11/12/2020 registered with Kopri Police Station, Thane for the offence punishable under Sections 8(c), 12(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter "NDPS Act", for short).

3. The date of the incident is 11/12/2020. The applicant was arrested on 12/12/2020. In all there are three accused. The accused No.1 was caught on 11/12/2020 with 55 grams

of Mephedrone (MD). Pursuant to the statement of accused No.1, accused No.2 and accused No.3 (applicant) were searched. The accused No.2 was found with intermediate quantity of MD. The applicant was found in possession of commercial quantity. There are no criminal antecedents reported against the applicant. The applicant is in custody for more than 2 years and 2 months. The trial is likely to take a long time to conclude as even the charge is yet to be framed.

4. Having regard to the provisions of Section 37 of the NDPS Act, the applicant will have to satisfy the twin conditions for seeking release on bail.

5. The statement of co-accused No.1– Ayub Nisar Ansari was recorded on 12/12/2020. He stated that he would show the investigating officer the place and person from whom the co-accused purchased drugs. The statement was recorded in the presence of the Police Sub Inspector and panchas. The raiding party therefore proceeded and searched the applicant who was found in possession of commercial quantity.

6. It is contended by learned counsel for the applicant that there is non-compliance with the provisions of Section 42(1) of the NDPS Act. The information received from the co-accused No.1 was not reduced in writing. Learned counsel submitted that as per the requirement of Section 41(2) of the NDPS Act, the Police Sub Inspector who carried out the search is not an empowered officer. Reliance was placed on the notification dated 19/12/1985 issued by the State Government in exercise of the powers conferred by sub-section (2) of Section 41 of the NDPS Act that all officers of the police department of and above the rank of Inspector of Police posted in any part of the State of Maharashtra are empowered for the purpose of said sub-Section (2). In the present case the PSI is not empowered under Section 41(2) of the NDPS Act. This is not a case of a chance recovery as specific information was received from the accused No.1 which ought to have been reduced in writing in terms of Section 42(1) of the NDPS Act. It was sought to be contended by learned APP that the memorandum statement of the accused No.1 dated

12/12/2020 informing that he could show the place and person from whom the co-accused was purchasing the substance amounts to taking down the information in writing in terms of Section 42(1) of the NDPS Act. I am afraid such a memorandum statement cannot be treated as an information within the meaning of Section 42(1) of the NDPS Act. Even assuming that the memorandum statement of the co-accused is to be construed as the information taken down in writing, still then there is nothing to indicate that Section 42(2) of the NDPS Act is complied with. These are my prima facie observations. Prima facie there is a breach of Section 42(1) of the NDPS Act.

7. I am convinced that the conditions set out under Section 37 of the NDPS Act for releasing the applicant on bail are satisfied in the present case. There are no criminal antecedents reported against the applicant and therefore, it is not possible for me to infer that the applicant has a propensity to commit a crime of a similar nature in future. Moreover, as indicated earlier the applicant is in custody for more than 2 years and 2 months with no possibility of the

trial concluding anytime soon. There is nothing to indicate that the applicant will not make himself available for trial and there is possibility of his fleeing. The charge-sheet has been filed and the investigation is complete. The applicant can be released on bail.

8. Hence, the following order :-

ORDER

- (a) Application is allowed.
- (b) Applicant-Nabi Kasim Shaikh @ Naish shall be released on bail in connection with C.R. No.II-113 of 2020 dated 11/12/2020 registered with Kopri Police Station, Thane, on his furnishing P.R. Bond of Rs.1,00,000/- with one or more sureties in the like amount.
- (c) 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.

(d) The applicant shall report to the Crime Branch, Unit-V, Thane once a month on every alternate Saturday of the month between 11.00 a.m. and 12.00 noon commencing March 2023 from the date of his release on bail.

(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 surrender his passport with the trial Court. If he does not have a passport, he shall file an affidavit to that effect before the trial Court at the time of his release on bail.

9. The Bail Application is disposed of.

(M. S. KARNIK, J.)