



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

BAIL APPLICATION NO. 2153 OF 2023

MOHAMMAD FARMAN MOHAMMAD

GULSHAN KHAN

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Kamlesh Satre i/b Adv. Vikas Chavan for the Applicant.
Mr. P. H. Gaikwad, APP for the State.
PSI Narendra Kore, Nayanagar Police Station.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 17, 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) and 20(c) the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter "NDPS Act", for short) registered on 27/09/2021 vide C.R. No.532 of 2021 with Nayanagar Police Station.
- 3.** The raiding party during patrolling duty on 26/09/2021 at around 21.45 hrs noticed something

suspicious about the activities of 2 persons. The patrolling party suspected that these persons were carrying contraband. After following the proper procedure prescribed, a search of the present applicant was taken in the presence of 2 panchas. The applicant was found in possession of 50 gms of contraband "Mephedrone" (MD). The applicant was arrested on 26/09/2021 and is now in custody for more than 2 years.

4. According to the learned counsel for the applicant, the quantity found with the applicant is an intermediate quantity less than the commercial quantity. Learned APP opposed the application by contending that the quantity of 50 gms MD found in possession of the applicant, as per notification dated 19/10/2001 in exercise of powers conferred by clause (viia) of Section 2 of the NDPS Act, will have to be regarded as a commercial quantity and hence, rigours of Section 37 of the NDPS Act will apply. Learned APP submitted that the applicant will have to satisfy this Court about the twin conditions.

5. I do not find any substance in this submission of learned APP. The contention of learned APP is separately covered by the decision of this Court in **Vikas Babbarsingh Itkan Vs. The State of Maharashtra**¹. Learned counsel for the applicant has also relied upon the decision dated 13/06/2003 of the High Court of Himachal Pradesh in **Ratto Vs. The State of Himachal Pradesh**². I am in respectful agreement with the view taken by Their Lordships in Ratto Vs. The State of H.P. (supra). 50 gms MD is the quantity specified by the notification. Therefore, in terms of clause (viia) of Section 2, 50 gms MD will have to be regarded as intermediate quantity, less than the commercial quantity. I, therefore, have no hesitation in holding that the rigours of Section 37 will not apply in the present case.

6. So far as compliance with Section 50 is concerned, the applicant was informed of his right to be searched before the gazetted officer or the magistrate to which the applicant replied orally that the same is not necessary. The panchanama records that the response of the applicant is

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2 Cr.M.P. (M) No. 1101 of 2002

accordingly written in the Section 50 notice under which the applicant has affixed his signature. At page No.24 of the paperbook is a written notice under Section 50 on which though there appears the signature of the applicant but the words stated to have been written by the applicant as mentioned in the panchnama are found missing above his signature in the Section 50 notice.

7. The investigation is complete and the charge-sheet has been filed. Looking at the age of the applicant and as the applicant is in custody for more than 2 years, with no possibility of trial concluding any time soon, further considering the fact that there are no criminal antecedents reported against the applicant, the applicant can be enlarged on bail. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant- Mohammad Farman Mohammad Gulshan Khan in connection with C.R. No.532 of 2021 registered with Nayanagar Police Station shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more solvent sureties in the like amount.

(c) The applicant shall attend the Investigating Officer of Nayanagar police station once in a month every first Monday of the month 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 attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

8. The application is disposed of.

(M. S. KARNIK, J.)