

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

BAIL APPLICATION NO.3522/2021

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ZEESHAN ARIF MEMON

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Ayaz Khan for the applicant.
Mr. S. V. Gavand, APP for State.
API Sandeep Wanganekar, ATS, Thane Unit.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 7, 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), 20, 22, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter 'NDPS Act' for short), registered vide First Information Report (FIR) No.8/2020 with ATS, Thane Unit.

3. The incident is dated October 30, 2020. The applicant was apprehended on October 30, 2020, at 02:10 hrs. The accused no.1 was apprehended at 12:30 hrs. on October 30, 2022 with 60 gms. Mephedrone (MD) which is commercial

quantity. The accused no.1 was arrested and is in custody.

4. So far as the applicant is concerned, it is the contention of learned APP that the specific information was received that it is the applicant who was to carry psychotropic substance (MD). Admittedly, upon apprehending the present applicant, it was revealed that nothing was found in his possession.

5. My attention is invited to the report of the investigating agency dated April 19, 2021 where the material against the applicant to show his complicity is stated to be one mobile phone which was recovered from the possession of the applicant. In the said mobile phone, there are some videos and some photographs of the applicant weighing white coloured powder. It is recorded that the applicant stated that the said powder is to be MD. In the mobile some whatsapp messages were found regarding the purchase and sale of drugs. The chats have been sent to the laboratory for forensic report. The chats do not appear to be in respect of the present seizure from the co-accused. The Forensic Science Laboratory (FSL) report is yet to be received.

6. So far as the substance found in possession of the accused no.1 is concerned, there is nothing to indicate the applicant's involvement in this regard. The call detail records only show that some calls are exchanged between the applicant and the accused no.1 without any other specific details.

7. Learned counsel for the applicant relied upon the decision of the Hon'ble Supreme Court in the case of **State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & anr.**¹ to submit that the CDR details between the applicant and the accused no.1 is an aspect that will be examined at the stage of trial.

8. In my opinion, though Section 29 of the NDPS Act is applied in the present case, *prima facie*, the possibility of conviction of the applicant appears to be bleak. The applicant is in custody since October 30, 2020, that is, for a period of more than two years and three months. There are no criminal antecedents reported against the applicant. There is nothing on record to indicate that the applicant is likely to commit similar offence if released on bail. The

¹ Petition for Spl. Leave to Appeal (Crl.) No.242/2022 (arising out of Diary No.22702/2020) dtd.10.1.2022.

applicant, therefore, can be released on bail as the investigation is complete and the charge-sheet has been filed. Hence the following order.

ORDER

- (a) The application is allowed.
- (b) The applicant in connection with FIR No.8/2020 with ATS, Thane Unit, shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one or more sureties in the like amount.
- (c) The applicant shall report to the Investigating Officer of the concerned police station once in a month on every Saturday, 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.

9. The application is disposed of.

(M. S. KARNIK, J.)