

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

BAIL APPLICATION NO.3486 OF 2021

Parvez Haseen Khan

...Applicant

Versus

The State of Maharashtra (through
A.N.C. Bandra Unit)

...Respondent

...

Mr Taraq Sayed with Ms Ashwini, Ms Alisha Parekh and Mr. Advait Tamhankar for the Applicant.

Mr. S.H. Yadav, APP for the Respondent -State.

Mr. Pawale, PSI, ANC, Azad Maidan Police Station, present.

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CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 19th JULY, 2023.

P. C. :-

1. By this application under Section 439 of the Cr.PC. the Applicant seeks enlargement on bail in NDPS Special Case No.580 of 2021 pending on the file of learned Special Judge, (N.D.P.S.) Sessions Court, Greater Bombay, for the offences punishable under Sections 8(c), 20(c) and 29 of the Narcotic Drugs Psychotropic Substances Act, 1985.

2. The records reveal that on 25/11/2020 Police Constable-Mr. Mandhare attached to Anti Narcotic Cell had received information

that the Applicant herein and another were selling contraband in and around Mumbai and Suburb using Hundai Xcent Motor Car No.MH-02-FG-1574. It was further informed that the Applicant and the co-accused were to come near Pawar Chawl, Bhim Nagar, Ghatkopar Andheri Link Road, under the Metro Bridge, Ghatkopar (West), Mumbai, at about 3.00 p.m. Accordingly, mandate under Section 42 was complied with and a trap was led. It is stated that the car mentioned in the information note, arrived at the spot. The ANC team intercepted the said vehicle. The Applicant, who was at the driver seat was accosted. The car was searched and a bag containing Ganja, weighing about 22 kg was recovered from the front seat, a bag with Ganja weighing about 72 kg was recovered from the dickey and a bag with Ganja weighing 10 kg was recovered from the rear seat. Subsequently, crime No.33 of 2023 came to be registered. Samples of the seized contraband were drawn and forwarded to CFSL for analysis and they tested positive for Ganja. The investigation followed and upon completion of the investigation charge-sheet came to be filed.

3. Learned counsel for the Applicant claims that the investigating agency has not drawn the sample in compliance with the standing orders 1 /88 and 1 /89 and hence the sample drawn cannot

be considered to be a representative sample. Reliance is placed on decisions of this Court in *Ibrahim Khwaja Miya Sayyed @ Raju Vs. The State of Maharashtra, Bail Application No.1296 of 2022, Hari Mahadu Valse Vs. The State of Maharashtra, in Bail Application No.2299 of 2019*, decisions of the Delhi High Court in *Basant Rai vs. State 191(2012) DLT 403, Amani Fidel Chris vs. Narcotics Control Bureau, 2020 SCC Online Del 2080. Laxman Thakur Vs. State (Govt. of NCT of Delhi) in Bail Application No.3233 of 2022*, and the decision of the Telangana High Court in *Baba Sow Chandekar and Anr. Vs. The State of Telangana, Criminal Petition No.4428 of 2022*.

4. The panchanama dated 25/11/2020 records that the investigating agency had mixed together the entire contraband contained in all the three bags and thereafter drawn three samples, one of which was forwarded to CFSL for analysis. The learned Single Judge of Delhi High Court in *Amani Fidel Chris* (supra) has held that “*Mixing of the contents of container/package (in one lot) and then drawing the representative samples is not permissible under the Standing Orders and rightly so since such a sample would cease to be a representative sample of the corresponding container/package.*” It is stated that decision in *Amani Fidel Chris* (supra) was challenged by

NCB before the Apex Court and that the Special Leave Petition has been dismissed by the Hon'ble Supreme Court. Similar view is taken by this Court in ***Ibrahim Khwaja Miya Sayyed*** and ***Hari Mahadu Valse***(supra) and by Telangana High Court in ***Baba Sow Chandekar*** (supra)

5. It is also to be noted that the Applicant is in custody since 25/11/2020. It is stated that till date charge has not been framed. It is evident that considering the large pendency, the trial is not likely to conclude soon. In ***Rabi Prakash Vs. The State of Odisha*** in ***Special Leave to Appeal (Crl.) 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.*

6. Under the circumstances, the application is allowed on the following terms and conditions:-

- (i) The Applicant, who is facing trial in NDPS Special Case No.580 of 2021 pending on the file of learned Special Judge, (N.D.P.S.) Sessions Court, Greater Bombay, is ordered to be released on bail on furnishing bail bonds in the sum of Rs.1,00,000/- with one or two sureties to the like amount.
- (ii) The Applicant shall report Anti Narcotics Cell, Azad Maidan, once in three months on the first Monday of the month between 11.00 a.m. to 2.00 p.m.
- (iii) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.
- (iv) The Applicant shall not leave the State of Maharashtra without prior permission of the court.
- (v) The Applicant shall not interfere with the witnesses or tamper with the evidence in any manner.
- (vi) The Applicant shall keep the Investigating Officer/Trial Court informed of his current address and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.

7. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)