

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3518 OF 2021

Arshadali Ramzanali Shah

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr.Dilip Mishra a/w Mr.Araz Khan a/w Ms.Zehra Charania –
Advocates for Applicant.

Mr.S.R.Agarkar – APP for Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 26TH JULY 2023

P. C. :

1. Heard learned Advocate for the Applicant and learned APP
2. It is true that when I have heard both the sides on 28th June, 2023, a submission was made about non compliance of various provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 [“NDPS Act”]. Today, in addition to those submissions, a submission is made about non compliance of the provisions of Section 52-A of NDPS Act and the observations made by the Hon’ble Supreme Court in case of *Union of India V/s. Mohanlal and Another*¹.
3. The present Applicant came to be arrested on the basis of an

¹ (2016) 3 Supreme Court Cases 379

interception made on 21st November, 2020 near bye-pass, near Rashid Compound, Kausa-Mumbra, District : Thane. The Applicant was found with mephedrone powder being about 200 grams and other articles. The FIR is lodged on 21st November, 2020 by Police Constable attached to Crime Branch – Unit No.1 – Thane. The offence is registered under Sections 8(c), 22 and 29 of NDPS Act. The quantity is a commercial quantity. He is also charge-sheeted. He is the sole Accused.

4. In order to buttress his submission about non compliance of Section 52-A of NDPS Act, my attention is invited to the following documents :-

- (a) Page No.19 – FIR dated 21st November, 2020 which mentions about seizure of mephedrone powder and the samples described as A-1, A-2 and remaining as Exhibit-A.
- (b) Page No.50 – Letter dated 23rd November, 2020 addressed to the Chemical Analyzer wherein the sample at Exhibit-A1 was sent.
- (c) Page No.61 – Certificate dated 10th December, 2020 issued by the Court of JMFC – Thane as per the provisions of Section 52-A of NDPS Act before him, the sample at Exhibit-A2 was produced. It nowhere says about collecting fresh samples.
- (d) Page No.114 – CA report dated 15th February, 2021 wherein sample Exhibit A-1 is analyzed. The report is positive. Date of receipt of sample is 23rd November,

2020. The sample is not taken before the learned Magistrate. Hence, no occasion of sending to CA will arise. Whatever sample is analyzed, is taken at the spot.

5. This is not in conformity with the provisions of Section 52A of NDPS Act. This is also not in conformity with the observations in paragraph No.31(1) of *Mohanlal and Another (supra)*. Recently, the Hon'ble Supreme Court in case of *Simranjit Singh V/s. State of Punjab*² has dealt with the issue of evidentiary value of sample taken at the spot. The relevant paragraph is Para No.7 and observation in Para No.9. The sample was not considered and the conviction was set aside.

6. In view of that, bar under Section 37 of NDPS Act will not come into picture. There are no criminal antecedents. He is entitled for bail. Hence, following order :-

O R D E R

- (i) Application is allowed.
- (ii) Applicant - Arshadali Ramzanali Shah be released on bail in connection with C.R. No. 929 of 2020 registered with Mumbra Police Station – District : Thane City for the offences punishable under Sections 8(c), 22 and 29 of NDPS Act, on furnishing personal bond and surety bond of Rs.50,000/-.

² Criminal Appeal No.1443 of 2023 : 9th May, 2023 : Supreme Court

- (iii) Applicant is directed to give attendance to Crime Branch – Unit No.1 – Thane on first and third Wednesday from 10.00 to 12.00 noon for one year.
- (iv) Applicant not to threaten the Prosecution witnesses or to allure them in any manner.
- (v) In case of breach of any of the conditions, the bail of the Applicant is liable to be cancelled after notice.

7. These are my prima facie observations. Let the learned trial Court need not be influenced by them.

8. Application is disposed of in the aforesaid terms.

9. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]