

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

ANTICIPATORY BAIL APPLICATION NO. 2329 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Saifuddin Wahidduddin Shaikh @
Mohammed Said Shaikh

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Shirsat, a/w M. A. Khan, for the Applicant.

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

Mr. Prashant Parmar, P.I., DCB CID, Chembur Unit-6,
present.

CORAM: N. J. JAMADAR, J.

DATED: 12th SEPTEMBER, 2023

ORDER:-

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

2. This is an application for pre-arrest bail in connection with CR No.72 of 2022, registered with DCB CID Unit-6, Mumbai, for the offences punishable under Sections 8(c), 21 and 23 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act").

3. On 19th October, 2022, pursuant to an intimation, a raid was conducted at Buddhanshet Chawl, Kurla. Co-accused Wahiduddin, the father of the applicant, was found in possession of 3076 bottles of Codeine Phosphate syrup.

Two to three unknown persons were also present thereat alongwith co-accused No.1 Wahiduddin. After noticing the police party, those person fled away from the spot of raid. It transpired that one of them was Mohammed Arbaj, son of Wahiduddin, and other two were the purchasers of the contraband material.

4. Eventually, post completion of investigation charge-sheet came to be lodged. In the charge-sheet, the applicant has been shown as the person not sent for trial. Apprehending arrest, the applicant approached the Special Court. As the Special Judge declined to exercise the discretion in favour of the applicant, this application for pre-arrest bail.

5. Mr. Shirsat, the learned Counsel for the applicant, submitted that the applicant was nowhere in the frame. In fact, there was no needle of suspicion against the applicant and, thus, the applicant was never questioned when the applicant had visited the police station in connection with the proceedings in respect of his father Wahiduddin, co-accused No.1, and brother Arbaj. Without any rhyme or reason the applicant has been shown as an accused not sent for trial while lodging the charge-sheet. Taking the Court through the

report under Section 173 of the Code, especially the allegations in the first information report which do not indicate the presence of the applicant at the spot, Mr. Shirsat submitted that a strong *prima facie* case for pre-arrest bail is made out.

6. Mr. Gavand, the learned APP, on the other hand, submitted that the complicity of the applicant is borne out by the statement of the co-accused recorded during the course of investigation. Refuting the submission that name of the applicant figured for the first time in the charge-sheet, Mr. Gavand submitted that in the second remand report of accused No.1 Wahiduddin dated 25th October, 2022 itself, the applicant was shown as a wanted accused. To add to this, in the disclosure statement made by co-accused Afzal Haider, the supplier of the contraband, the name of accused No.1 Wahiduddin, as the person to whom the contraband was being supplied, has been revealed. Having regard to the commercial quantity of contraband found in possession of co-accused Wahiduddin and the involvement of the applicant in the said offences having been borne out by the record, the application does not merit consideration.

7. I find substance in the submissions of Mr. Gavand. The thrust of the submission of Mr. Shirsat was that till the date of the lodging of the report, the applicant was nowhere in the frame. However, the remand report of Wahiduddin, accused No.1 and father of the applicant, indicates that the applicant herein alongwith his brother Mohammed Arbaj and two alleged purchasers were shown as wanted accused. The investigation, at that stage, had revealed that the applicant herein was instrumental in acquiring the contraband material from the supplier. I have also perused the case diary. It indicates that the investigation revealed that the applicant was purchasing the contraband from co-accused Afjal. A statement made by the co-accused, during the course of investigation, can be taken into account by the Investigating Officer to facilitate further investigation.

8. Having regard to the nature and quantity of the contraband article and the deleterious effect the offences have on the society at large, in my view, at this stage, the aforesaid material which has emerged during the course of the investigation furnishes *prima facie* sufficient ground to proceed against the applicant. Custodial interrogation of the applicant is necessary for a complete and effectual

investigation and to unmask the identity of the other persons involved in the offences. Resultantly, I am not persuaded to exercise the discretion in favour of the applicant.

9. Hence, the following order:

: O R D E R :

- (i) Application stands rejected.
- (ii) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

[N. J. JAMADAR, J.]