



Diksha Rane

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

BAIL APPLICATION NO.2476/2023

MOHAMMED RIZWAN SAYYED

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Taraq Sayed a/w. Adv. Ashwini Achari a/w. Adv. Alisha Parekh for the applicant.

Mr. N. B. Patil, APP for the State.

PSI Awale, A.N.C. Azad Maidan Unit.

ASI Chavan, A.N.C. Azad Maidan Unit.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 30, 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) read with 22(b), 22(c), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter 'the NDPS Act' for short) registered on 12/9/2022 vide C.R. No.166/2022 with the Anti-Narcotic Cell, Mumbai.
- 3.** The applicant was arrested on 12/9/2023. The Anti-Narcotic Cell, Mumbai, of the respondent noticed the

activities of one person suspicious. After following prescribed procedure, it came to light that the applicant who is the accused no.1 was found in possession of 35 gms. contraband Mephedrone (MD). During the course of further investigation, the statement of the applicant revealed that the said contraband was purchased by the applicant from one Shahnawaz, who is the accused no.2, resident of Mumbra. The applicant stated that the applicant was regularly purchasing the contraband from the said Shahnawaz. Later on, the accused no.2 Shahnawaz came to be arrested and he was found in possession of the contraband MD which was a commercial quantity.

4. Learned APP while opposing the bail application submitted that the applicant was regularly purchasing the contraband from the accused no.2 Shahnawaz. It is further submitted that on the statement of the present applicant, the accused no.2 Shahnawaz came to be arrested and from him commercial quantity was found. It is, therefore, the submission of learned APP that the entire contraband which is found in possession of the accused nos.1 and 2 will have to be taken into consideration and hence, the rigours of

Section 37 of the NDPS Act will apply in the present case.

5. I have perused the First Information Report (FIR) as well as memorandum statement of the applicant dated 12/9/2022 which relate to the arrest of the accused no.2 Shahnawaz from whom the commercial quantity of contraband was recovered. So far as the present applicant is concerned, the applicant was found in possession of an intermediate quantity.

6. In the facts and circumstances of the present case, in my opinion, *prima facie*, the recovery of the contraband from the applicant will have to be regarded as an intermediate quantity. As the applicant was found in possession of an intermediate quantity, the rigours of Section 37 of the NDPS Act will not be applicable in the present facts and the circumstances.

7. The applicant was arrested on 12/9/2022 and is in custody for more than one year with no possibility of the trial concluding any time soon. The investigation is complete. The charge-sheet has been filed. There are no criminal antecedents reported against the applicant. The applicant does not appear to be a flight risk. Hence, the

following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Mohammed Rizwan Sayyed in connection with C.R. No.166/2022 registered with Anti-Narcotic Cell, Mumbai, shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one or more solvent sureties in the like amount.
- (c) The applicant shall attend the Investigating Officer of Anti-Narcotic Cell, Mumbai, once in a week on every Sunday between 11.00 a.m. and 1.00 p.m. till further orders of the trial Court.
- (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 not leave country without prior permission of the trial Court.

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(h) The applicant shall surrender his passport, if any, to the investigating officer.

8. The application is disposed of.

9. The observations are, *prima facie*, limited for deciding the present bail application. The trial Court to proceed with the trial on its own merits and in accordance with law.

(M. S. KARNIK, J.)