

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

BAIL APPLICATION NO. 3740 OF 2022

Sahil Jalauddin Ahmad

.... Applicant

v/s.

The State of Maharashtra

.... Respondent

Ms. Anjali Patil a/w. Malika Sharma for the Applicant.

Mr. R.M. Pethe, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 26th JULY, 2023.

P. C. :-

. This is an Application under section 439 of Cr.PC. filed by the aforesaid Applicant who is facing trial in NDPS Special Case No.912/2021 pending on the file of learned Special Judge (NDPS) Judge, Greater Mumbai. The said case arises from C.R.No.05/2021 registered with Tardeo Police Station, Mumbai for offences punishable under sections 8(c), 20(c) of Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985.

2. Heard learned counsel for the Applicant and learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The case of the prosecution is that while Mr. Deepak Koli, constable

attached to Crime Branch Mumbai was proceeding to investigate C.R.No.24/2021, he saw two persons standing on footpath and trying to stop a taxi for hire. He inquired their names and whereabouts and searched the gunny bags carried by them. He states that the two gunny bags contained total 21 kgs and 500 gms of contraband. The same was seized in presence of panchas. Crime was registered against the Applicant. Subsequently, sample was drawn and forwarded to CFSL for analysis. The sample tested positive for ganja. The Applicant came to be arrested and prosecuted for the offences under the provisions of the NDPS Act.

4. The records reveal that the contraband found in both the gunny bags was mixed together before taking the sample. The Delhi High Court in *Amani Fidel Chris v/s. Narcotics Control Bureau CRL Appeal No.1027 of 2015* and *Ram Bharose v/s. State (Govt. of NCT of Delhi)* in *Bail Application No.1623 of 2022* has considered the Standing Order 1 of 88, which is pari material with Standing Order 1 of 89 and 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 seized to be a representative sample of the corresponding container / package.*” Hence, the sample sent to CFSL was not the representative sample.

5. The records also reveal that the contraband was seized on 11/02/2021 whereas the sample was drawn on 03/03/2022, i.e., after a period of over one year which cannot be considered as a reasonable period for filing application under section 55(A) of NDPS Act. No explanation has been given for the delay in drawing the sample.

6. As on the date of the incident, the Applicant was 19 years of age. He is in custody since 11/02/2021. It is stated that charge is not yet framed. Considering the large pendency, there is no possibility of the trial to conclude soon. Considering the above facts and circumstances, in my considered view, the rigors of section 37 would not be applicable and hence, the Applicant is entitled for bail.

7. In view of the above, the Application is allowed on the following terms and conditions :-

- (i) The Applicant – Sahil Jalauddin Ahmad who is facing trial in NDPS Special Case No.912/2021 pending on the file of learned Special Judge (NDPS) Judge, Greater Mumbai arising out of C.R.No.05/2021 registered with Tardeo Police Station, Mumbai, is ordered to be released on cash bail in the sum of Rs.50,000/- for a period of four weeks ;

- (ii) The Applicant shall, within the said period of four weeks, furnish P.R. bonds in the sum of Rs.50,000/- with one or two solvent sureties in the like amount ;
- (iii) The Applicant shall report to Tardeo Police Station, Mumbai once in 3 months on 1st Monday of the month between 11.00 a.m. to 02.00 p.m. till framing of the charge ;
- (iv) The Applicant shall not interfere with the prosecution witnesses and shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case in any manner ;
- (v) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.
- (vi) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

8. Bail Application stands disposed of in above terms.

PREETI
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JAYANI

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JAYANI
Date: 2023.07.27
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(SMT. ANUJA PRABHUDESSAI, J.)