



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

BAIL APPLICATION NO. 2810 OF 2023

FARHAN ABDUL KHALID KHARBE ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Adv. Mandar Goswami for the Applicant.
Ms. Rutuja Ambekar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 08, 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) and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) registered on 01/01/2019 vide C.R. No.01 of 2019 with Narpoli Police Station.
- 3.** Based on the information received the applicant was searched in the night between 31/12/2018 and 01/01/2019. The applicant was found in possession of 105 gms of the

contraband Mephedrone (MD) which is a commercial quantity. The applicant was arrested on 01/01/2019 and is in custody for more than 04 years and 11 months as an undertrial. According to the learned counsel for the applicant, the charge has been framed by the trial Court. It appears that the trial is likely to take a long time to conclude as now after the establishment of Bhiwandi Court the matter stands transferred to the new Court.

4. To get over the rigours of Section 37 of the NDPS Act, I need to make some observations which are *prima facie* in nature and shall not influence the trial Court. The learned counsel for the applicant contends that there has been non-compliance with Section 42 of the NDPS Act. The officer who first received the information i.e. PSI did not reduce the same into writing. The concerned officer informed his superior about the information that was received and it was his superior officer who reduced the information in writing.

5. Learned APP opposed the application and contended that there is compliance with the provisions of Section 42 of the NDPS. My attention is invited by the learned counsel

for the applicant to the decision of the Supreme Court in the case of Directorate of Revenue & Anr. vs. Mohammed Nisar Holia¹ in support of his submissions. *Prima facie*, I find force in this submission of the learned counsel for the applicant.

6. There are no criminal antecedents reported against the applicant. Hence, it is unlikely that the applicant will commit any similar offence while on bail. In any case, I propose to impose stringent conditions on the applicant. The applicant is in custody almost for 5 years. Even on the ground of long incarceration, I am inclined to enlarge the applicant on bail. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Farhan Abdul Khalid Kharbe in connection with C.R. No.01 of 2019 registered with Narpoli Police Station shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more local sureties in the like amount.
- (c) The applicant shall attend the Investigating Officer of Narpoli police station once in a month every

1 2008 (2) Supreme Court Cases 370

first Sunday of the month between 11.00 a.m. and 1.00 p.m.

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

(g) The applicant shall surrender his passport to the investigating officer. If the applicant does not have passport, an affidavit shall be filed with the trial Court to that effect.

(h) The applicant shall not leave India without prior permission of the trial Court.

7. The application is disposed of.

(M. S. KARNIK, J.)