

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

BAIL APPLICATION NO.3334 OF 2022

Mohammed Hanif Naimmulla Shaikh ..Applicant
VS.
The State of Maharashtra ..Respondent

Ms. Munira Palanpurwala a/w Ms. Deepa Amati and Mr.
Mushtaq Shaikh, for the Applicant.
Ms. P. N. Dabholkar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 20, 2023

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP.
- 2.** This is an application for bail in respect of C.R.No. 14 of 2022 dated 31/01/2022 registered with Wadala Police Station for the offence punishable under sections 8(c), 20(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter 'NDPS' for short).
- 3.** The applicant is accused no.3. The applicant came to be arrested on 14/03/2022 on the basis of the information that was allegedly supplied by the accused nos. 1 and 2.

The statement of the co-accused nos.1 and 2 that the contraband was to be supplied to the present applicant (accused no. 3) is not on record. Reliance is placed on the statement of the police officials who say that the co-accused informed during the course of interrogation that the contraband was to be supplied to the accused no.3. CDR details are not on record. The applicant was arrested for the offence punishable under section 29 of the Act. Factually, there is nothing recovered from the applicant. The materials against the applicant are the statement of the police officials who say that during the course of interrogation of the accused nos.1 and 2 who were found in possession 1300 and 700 grams of Charas respectively were to be delivered to the present applicant. It is the case of the prosecution that therefore the applicant is involved and participated in the said crime. As indicated earlier, the statements of the co-accused are not on record. It is only on the statement of the police officials, the applicant is implicated.

4. Learned APP invited my attention to the order passed

by the learned Sessions Judge while rejecting the application for bail of the applicant. Relevant portion of the said order i.e. paragraphs 9, 10 and 11 read thus:

"9. The learned SPP for the State has taken the court through the bail application filed by the present applicant in which the applicant has admitted that he was addicted to consuming a narcotic substance and used to purchase the narcotic in the small quantity from one of the accused Amey Jadhav. He was also aware that Amey Jadhav had contact with the person by name Kamlesh Gupta and that they deal with high quantity of narcotic substance. The admission of the accused would reveal that he was aware about the activities of other accused and that he was in contact with the other accused and that immediately after the arrest of accused nos. 1 and 2, he has switched off his mobile phone. This shows that accused no. 3 was in contact with the accused nos. 1 and 2. He was aware about the activities of accused nos. 1 and 2.

10. It was on the basis of statement of co-accused, the police come to know about role of applicant. Such statement of co-accused is not admissible as evidence but can be considered during investigation.

11. Absence of possession of contraband by accused would not absolve him from scrutiny under Section 37, especially when Section 29 is applied. The seized quantity is commercial quantity. Hence interdict of section 37 of NDPS act would apply. The accused would have to show that there are no reasonable grounds to believe that he is guilty and secondly if released on bail he would not committed offence of similar nature."

5. It can thus be seen that the applicant has in the bail application only stated about purchasing small quantity of narcotic substance from one of the accused-Amey Jadhav as he was addicted to consuming a narcotic substance. It is further stated by him that he was aware that Amey Jadhav

had contact with the person by name Kamlesh Gupta and that they deal with high quantity of narcotic substance. There are no CDR call details on record. No doubt, it appears that the applicant was knowing accused nos. 1 and 2 and was in contact with them. From the statements made by the applicant in bail application it reveals that he was purchasing small quantity of narcotic from the accused – Amey Jadhav for personal consumption. Apart from that there is no material implicating the present applicant showing his involvement or participation in dealing with commercial quantity of narcotic substance. The statement of the co-accused without any other additional material in support of the prosecution case against the applicant, cannot be relied upon. Prima facie, in my opinion, there are reasonable grounds to believe that the applicant is not guilty of the alleged offence, hence, rigours of section 37 of the NDPS Act may not apply. The applicant was not found in possession of narcotic substance. The applicant is in custody since 14/03/2022 for a period of more than 11 months. The trial is likely to take a long time to conclude.

The charge-sheet has been filed and investigation is complete. There are no criminal antecedents reported against the applicant. The applicant can be released on bail. Hence, the following order.

ORDER

- (a) The application is allowed.
- (b) The applicant – Mohammed Hanif Naimmulla Shaikh in connection with C.R. No. 14 of 2022 dated 31/01/2022 registered with Wadala Police Station shall be released on bail on furnishing P.R. bond in the sum of Rs.1,00,000/- with one or more sureties in the like amount.
- (c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant should not tamper with evidence.
- (e) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer of the concerned Police Station and shall keep him updated, if there is any change

(f) The applicant shall report to the investigating officer twice a month on every alternate Saturday i.e. on 1st and 3rd Saturday of every month between 11.00 am and 1.00 pm.

(g) The applicant shall deposit his passport with the trial Court. If he does not have a passport, he shall file an affidavit to that effect before the trial Court at the time of his release on bail.

6. The application is disposed of.

(M. S. KARNIK, J.)