

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

BAIL APPLICATION NO. 2860 OF 2022

Imtiyaz Mhd. Husain Sarothiya ...Applicant

vs.

State of Maharashtra ...Respondent

Ms.Ashwini Achari a/w Mr.Advait Tamhankar, Ms.Alisha Parekh,
Mr.Lochan Chandka i/b. Mr.Taraq Sayed – Advocates for Applicant.
Mr.S.R.Agarkar – APP for Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 26TH JULY 2023

P. C. :

1. Heard learned Advocate for Applicant and learned APP
2. Present Applicant is Accused No.1. He was found with contraband Mephedrone powder weighing about 250 grams. He was found possessing contraband on 21st December, 2020 at about 18.30 hours in front of Thakur Mall, Western Express Highway – Kashimira, District : Thane. The FIR is lodged by Police Constable attached to Crime Branch – Unit No.1 – Mira Bhayander Vasai Virar Police Commissionerate on 21st December, 2020 with Kashimira Police Station. The offence is under Sections 8(c), 21(c) of the

Satish Sangar

Narcotic Drugs and Psychotropic Substances Act, 1985 [“NDPS Act”]. During his interrogation, involvement of other Accused is disclosed. The Police could find out what is the source of other contraband and accordingly, arrested other Accused persons who have sold away to each other.

3. Charge-sheet is filed for the offences punishable under Sections 8(c), 20, 22(c) and 29 of NDPS Act. My attention is invited to following documents :-

- (a) Personal search panchnama (Page No.106) dated 21st December, 2020. Exhibit A-1 and Exhibit A-2 are the representative samples. Whereas, remaining contraband is at Exhibit-A.
- (b) Page No.107 is receipt for the purpose of Magistrate. Whereas, CA letter is dated 22nd December, 2020 (Page No.114).
- (c) Sample at Exhibit A-1 was sent. CA report is received but it is not part of charge-sheet nor it is annexed to the charge-sheet. Admittedly contraband was not produced before the learned Magistrate for any purpose. Samples were also not drawn before him.

4. The quantity is of commercial quantity. As there is non compliance of Section 52-A, bar under Section 37 is lifted. It is in clear violation of the observations in case of *Union of India V/s.*

Mohanlal and Another¹ Recently, the Hon'ble Supreme Court in case of ***Simranjit Singh V/s. State of Punjab***² has dealt with the issue of evidentiary value of sample taken at the spot.

5. This Court has already granted bail to co-accused Shakil Shafi Memon @ Chikna in Bail Application No. 1017 of 2022.

6. In view of the above, following order is passed :-

O R D E R

- (i) Application is allowed.
- (ii) Applicant Imtiyaz Mhd. Husain Sarothiya be released on bail in connection with C.R. No. 988 of 2020 registered with Kashimira Police Station – District : Thane Rural for the offences punishable under Sections 8(c), 20, 22(c) and 29 of NDPS Act, on furnishing personal bond and surety bond of Rs.50,000/-.
- (iii) He is directed to give attendance to Crime Branch – Unit No.1 – Kashimira Police Station on second Monday of every month from 3 to 5 p.m. for six months.
- (iv) Applicant not to threaten the Prosecution witnesses or to allure them in any manner.
- (v) In case of breach of any of the conditions, the bail of the Applicant is liable to be cancelled after notice.

7. These are my *prima facie* observations. Let the learned trial

¹ (2016) 3 Supreme Court Cases 379

² Criminal Appeal No.1443 of 2023 : 9th May, 2023 : Supreme Court

Court need not be influenced by them.

8. Application is disposed of in the aforesaid terms.
9. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]