

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

BAIL APPLICATION NO.2974 OF 2023

Saklen Ahmed Qureshi @ Boss s/o Shakil
Qureshi

...Applicant

Versus

The State of Maharashtra

...Respondent

....

Ms Puja Yadav with Mr. Shreenat Kamath for the Applicant.

Mr. S.H. Yadav, APP for the Respondent -State.

Mr. Santosh Salunkhe, ANC, Worli, present

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 26th OCTOBER, 2023.

P.C.:-

1. This is an application under Section 439 of the Cr.P.C. filed by the aforesaid Applicant, who is facing trial in N.D.P.S. Special Case No.192 of 2019 pending on the file of learned Special Judge (N.D.P.S.), City Civil and Sessions Court, Greater Mumbai. Said case arises from C.R. No.36 of 2019 registered with Anti Narcotic Cell, Mumbai, for the offences punishable under Sections 8(c), 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. Heard Ms Puja Yadav, learned counsel for the Applicant

and Mr. S.H. Yadav, learned APP for the Respondent -State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. It is the case of the prosecution that on 07/06/2019 the officers of Anti Narcotic Cell, Mumbai were on patrolling duty. At about 11.30 a.m. they noticed that the Applicant and the co-accused were moving in a suspicious manner. They were intercepted and contraband weighing 55gms Mephedrone was recovered from the possession of the Applicant. The contraband was seized under panchanama drawn in presence of panchas. The Applicant was placed under arrest and upon conclusion of investigation charge-sheet has been filed against him for the offences, as stated above.

4. The material on record prima facie shows the involvement of the Applicant in commission of the said crime. The records also indicate that by order dated 17/08/2020 the learned Additional Sessions Judge had granted temporary bail to the Applicant on the ground of death of his grandmother. While on temporary bail, the Applicant filed an application for bail before this

Court being Bail Application No.855 of 2022. When the APP brought this fact to the notice of this Court, the Applicant sought leave to withdraw the application with an undertaking that he would surrender before the Superintendent of Arthur Road Jail on 06/05/2022. The Applicant once again committed breach of this undertaking and filed Interim Application No.1951 of 2022 seeking extension of time to surrender before the Superintendent, Arthur Road Jail. This Court (Coram: Bharati Dangre, J.) after hearing the Applicant by order dated 28/06/2022 observed as under:

- “8. Even if the applicant has suffered from a fracture and that too, on 04/05/2022, he has not bothered to surrender himself as per his undertaking. The applicant has definitely misused the liberty conferred on him since 17/08/2020, when he was released on temporary bail and from that day, till date, he has not bothered to surrender.*
- 9. He is in breach of the order passed by the Additional Sessions Judge, Greater Bombay as well as in breach of the undertaking given to this court on 27/04/2022. The argument of Mr. Patil to the effect*

that his second bail application was pending on the ground of parity, cannot be a ground why he could not abide by the conditions of bail. The present application is, therefore, rejected.

10. Since it is informed that the applicant is in Ahmedabad, unless he surrenders himself within three days from today, the Investigating Officer can proceed to Ahmedabad and effect his arrest.”

It is only in view of the directions given to the Investigating Officer to arrest the Applicant in the event he does not surrender within three days, the Applicant surrendered on 30/06/2022.

5. Another aspect, which needs to be noted that when this Court specifically asked the learned counsel for the Applicant whether there were any criminal antecedent against this Applicant, a categorical statement was made that the Applicant did not have any criminal antecedent. Learned APP has brought to my notice that Crime No.4 of 2017 has been registered with NCB Mumbai, Zonal Unit for the offences punishable under Sections 8(c), 21(b), 22(b)

and 28 of the N.D.PS. Act.

6. The records prima facie indicate that the Applicant was in possession of commercial quantity of the contraband (Mephedron). It appears that the Applicant has committed subsequent offence while he was on bail in the previous crime. The conduct of the Applicant in misusing the liberty granted to him vide order dated 17/08/2020 and also considering the fact that he committed the present crime while he was on bail in Crime No.4 of 2017 and taking into consideration the provision of Section 37 of the NDPS Act, in my considered view the Applicant is not entitled for bail. Hence, the application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)