

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

BAIL APPLICATION NO.17 OF 2022

Badshah Pallikal Abdul Adbus Samad ... Applicant
v/s.
Anti Narcotics Cell, Bandra Unit and anr. Respondents

Mr. Taraq Sayed a/w. Mr. Advait Tamhankar, Ms. Ashwini
Achari and Mr. Shivraj Pawar for the Applicant.
Mr. R.M. Pethe, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 12th APRIL, 2023.

P. C. :-

. This is an Application under section 439 of Cr.PC. filed by the aforesaid Applicant who is facing trial in Special (NDPS) Case No.463/2020 pending on the file of learned Special (NDPS) Judge, City Civil and Sessions Court, Greater Mumbai for offences punishable under sections 8(c), 20(c) and 29 of the 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. It is the case of the prosecution that Mr. Shinde, Head Constable had received information that the Applicant herein and co-accused were to come to Karnac Bunder Bus stop, P. D'mello Road, Masjid Bunder, Mumbai to sell charas to the customers. A trap was laid on the basis of the said information under the supervision of PI Wadhawne. It is stated that the Applicant and the co-accused had come to the place of the incident i.e., Karnac Bunder Bus stop, P. D'mello Road. They were carrying cloth bags. The search was taken after complying with all the relevant provisions. It was revealed that the Applicant herein was carrying charas weighing 1 kg and 200 grams whereas the co-accused was found in possession of 200 gms of charas.

4. Considering the quantity of charas found in possession of the co-accused (accused no.2), he has been released on bail. The Applicant was allegedly found in possession of charas weighing 1 kg and 200 gms. which is stated to be commercial quantity.

5. Learned counsel for the Applicant states that there is no compliance of section 50 of NDPS Act. He has drawn my attention to the endorsement made by the Applicant and co-accused, a perusal of which reveals that both the accused had made the following

endorsement :-

“ Endorsement by Yashin Abdul :-

*Recived Letter. I aware about my rights Police
can take my personal serch.*

Endorsement by Badshaha Pallikal Abdul
Abdus Samad :-

*Recived Letter. I aware about my rights Police
can take my prsonal search. ”*

6. The endorsement allegedly made by both the accused, have same spelling and grammatical mistakes. Prima facie, the compliance of Section 50 of NDPS Act appears to be doubtful. The Applicant is in custody since 03/10/2019. It is stated that charge is not yet framed. Considering the large pendency, it would not be possible for the Special Court to conclude the trial in immediate future.

7. Considering the above facts and circumstances, in my considered view, this is a fit case to exercise discretion under section 439 of Cr.P.C. Hence, the Application is allowed on the following terms and conditions :-

- (i) The Applicant who is facing trial in Sessions Case No.7/2021 arising from Special (NDPS) Case No.463/2020 pending on the file of learned Special (NDPS) Judge, City Civil and Sessions Court, Greater Mumbai, is ordered to be released

on bail on furnishing bail bonds in the sum of Rs.50,000/- with one or two solvent sureties in the like amount ;

- (ii) The Applicant shall report to Anti Narcotics Cell, Bandra on 1st Monday of every month till framing of the charge ;
- (iii) The Applicant shall not leave the State of Maharashtra without prior permission of the Court ;
- (iv) The Applicant shall not interfere with the witnesses and shall not tamper with the evidence or attempt to influence or contact the 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
H JAYANI

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PREETI H JAYANI
Date: 2023.04.18
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(SMT. ANUJA PRABHUDESSAI, J.)