

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3644 OF 2022**

Saif Hanif Patel

...Applicant

vs.

State of Maharashtra

...Respondent

Mr. Dilip Mishra i/b Mr. Ayaz Khan for the Applicant.
Mr. H. J. Dedhia APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 5TH JULY 2023

P. C. :

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State.
2. The Officer is present. During Nakabandi on 15th October 2022, the police personnel attached to Nayanagar police station, Thane found one motor cycle coming from Kashimira. Co-accused Aamrez Shaikh was driver and the present Applicant was pillion rider. During the personal search of the Applicant, Mephedrone

weighing about 100.52 gm was found, apart from other articles. FIR was registered on 16th October 2021, with Nayanagar police station. At the time of seizure at the spot two samples were taken. It find place at page 50. After the investigation is complete the charge-sheet is filed.

3. Co-accused-Aamrez Shaikh was granted bail by this Court. Contention is raised that the samples were taken at the spot and not before the Magistrate as contemplated under Section 52-A of the NDPS Act.

4. According to learned APP, proper procedure was followed and it was sent for chemical analysis and there is positive report. It is true that in case of *Union of India Vs. Mohanlal and Anr.*¹ the Supreme Court after considering the practice as followed in entire country and has deprecated the practice of taking samples at the spot. Section 52-A of the NDPS Act lays down procedure to be followed for drawing of samples before the learned Magistrate and if it is done it can be used as primary evidence before the trial Court. In this case, normal procedure under section 52-A of the NDPS Act is not followed. In case of *Simranji Singh Vs. State of*

1 (2016) 3 SCC 379

*Punjab*² has refused to accept the evidence of taking of samples at the spot and set aside the conviction. There is great difficulty in accepting this piece of evidence in this case. Ultimately, we are bound by the observations of the Hon'ble Supreme Court. It holds good as on today. There are no antecedents hence, the bar under Section 37 is lifted and hence, the Applicant is entitled to be released on bail. Hence, the following order is passed :

ORDER

- (a) The Applicant-Saif Hanif Patel be released on bail in connection with C.R. No.II-578 of 2021, registered with Nayanagar police station for the offences punishable under Sections 8(c), read with 21(c) the NDPS Act, on furnishing personal bond and surety bond of Rs.50,000/-.
- (b) The Applicant shall not threaten the prosecution witnesses or allure them in any manner.
- (c) The Applicant shall give attendance to the Nayanagar police station on every first Monday of every month from 10 am to 12 noon for one year.

2 Cri.Appeal No.1443/2023 dt. 9/05/2023 Supreme Court

- (d) Needless to say, violating of the condition above will make the Applicant liable for cancellation of bail, after notice to the Applicant.
- 5. Application is disposed of accordingly.
- 6. These are my prima facie observations and the trial Court may not be influenced by that.
- 7. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]