

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

CRIMINAL BAIL APPLICATION NO. 3598 OF 2022

Mohammad Bilal Siddiquekhan

Age : 23 Years, R/o. : Room No.991,

Sanjay Nagar, Bainganwadi,

Road No. 9, Govandi, Mumbai.

...Applicant

vs.

State of Maharashtra

[Through Mumbra Police Station]

...Respondent

Ms.Ashwini Achari a/w Mr.Advait Tamhankar and Mr.Taraq Sayed
i/b. Mr.Lochan Chandka – Advocates for Applicant.

Mr.Y.Y.Dabke – APP for the Respondent-State.

Mr.Ashok Shendage – API – Crime Branch – Thane City.

CORAM : S. M. MODAK, J.

DATE : 26th APRIL, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State.

2. An FIR is registered at Mumbra Police Station on 31st December, 2021 on the complaint of Police Constable – Nasir Majid Sayyad attached to Crime Branch – Thane. The offence under Section 8(c), 22(c) and 29 of the Narcotic Drugs and Substances Act,

1985 [“NDPS”] was registered against in all 4 persons.

3. The sum and substance of the allegation is that when the First-Informant and other raiding party members have visited the spot on Mumbra bye-pass road in the intervening night of 30th December, 2021 and 31st December, 2021 at about 1.00 a.m., they found Accused No.2 – Vaseem Akram possessing narcotic substance called mephedrone weighing about 53 grams. They have took him into custody and completed the procedure.

4. During enquiry, it is disclosed that the present Applicant and two others have helped him in selling narcotic in and around that area. That is why, an FIR is lodged against 4 persons. On the same day, the Applicant came to be arrested on suspicion. He was interrogated. Nothing was found at his instance. After completion of investigation, charge-sheet is filed against in all 4 persons.

5. His Bail Application was rejected by the Court of Additional Sessions Judge cum Special Judge – NDPS Act on 22nd September, 2022. Predominantly, learned Special Judge relied upon the panchnama and statement of certain witnesses who have stated that they have seen the Accused No.2 and other Accused persons including the present Applicant selling ganja and pouches of powder

in and around Mumbra area. It was observed that the quantity was a commercial quantity. It seems that the learned Special Judge has considered the contraband seized from Accused No.2 and made that observation.

6. Today, learned Advocate for the Applicant tendered a copy of order passed by the Judge – Special Court on 17th February, 2022 presided over by Additional Session Judge Shri P.M.Gupta in respect of Accused No.3 – Asif Shaikh. It is submitted that his role is similar to that of present Applicant.

7. Whereas, according to learned APP, even though it may be true that nothing contraband was found from the possession of this Applicant, his name is disclosed during the enquiry with Accused No.2. Furthermore, he pointed out that there are call details report of the cell phone of the present Applicant which show that at the relevant time, he was moving in and around the area of Mumbra.

8. I have perused the papers and the order passed rejecting bail as well as granting bail to Accused – Asif Shaikh. I am inclined to grant him bail. It is true that nothing is seized during his personal search or at his instance also. When the Agency has invoked the provisions of Section 29 of NDPS Act which lays down the

“punishment for abetment and criminal conspiracy”, there has to be a material suggesting of criminal conspiracy.

9. Learned Special Judge while rejecting the Bail Application of this Applicant has referred statement of some of the witnesses. One of them is Abbas Ayyub Mansuri (Page No.129). I have perused it. What he has stated is :-- he had seen the arrested Accused along with the Police and his name is Vaseem Akram and what Vaseem has said is he had come along with other arrested Accused persons for the purpose of selling of mephedrone. Nowhere the said witness Abbas has said that he has seen the present Applicant selling any contraband article at that place. Other statements are on similar lines. Learned Special Judge has not paid attention to these facts.

10. Apart from this, there is evidence of Call Details Report [“CDR”] and according to learned APP, it indicates the conspiracy thereby warranting invocation of Section 29 of NDPS Act. There has to be evidence prior to the relevant act. What is submitted before me is about Call Details Report thereby suggesting the presence of the Applicant in and around the spot. It cannot be considered as an evidence of conspiracy in the set of present facts. Except that, there is no material to suggest about conspiracy. So, the contraband seized

from the Accused No.2 cannot be considered so as to deny bail to the present Applicant. The rigor under Section 37 of NDPS Act will not be applicable.

11. Applicant is entitled to be released on bail. Hence, order :-

O R D E R

- (i) Application is allowed.
- (ii) Applicant–Mohammad Bilal Siddiquekhan be released on bail in connection with C.R.No.1272 of 2021 registered with Mumbra Police Station – Thane on furnishing personal bond and surety bond of Rs.50,000/-.
- (iii) He shall not tamper with the Prosecution evidence in any manner.
- (iv) He shall not influence, threaten or pressurize the Prosecution witnesses to dissuade them from disclosing facts to the I.O. or Court.
- (v) He is directed to attend the Court regularly.
- (vi) He shall not commit any other offence.
- (vii) He is directed to furnish the details of his present residential address and the permanent address and the address of his one relative along with mobile number.

12. In case of breach of any of the conditions, the bail of the Applicant is liable to be cancelled after hearing.

13. It is made clear that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits, in accordance with the law, uninfluenced by the observations made in this order.

14. Application is disposed of in the aforesaid terms.

15. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]