

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

BAIL APPLICATION NO. 3521 OF 2019

Umer Usman Khan

..Applicant

VS.

The State of Maharashtra

..Respondent

Mr. Mandar Goswami for the Applicant.

Ms. A. A. Takalkar, APP for the State.

ASI – R.K. Chaudhari, Kasa Police Station, Dist. Palghar

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 21, 2023

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.

2. This is an application for bail by the applicant- Umer Usman Khan in connection with C.R. No.42 of 2019 dated 12/03/2019, registered with Kasa Police Station, Palghar, under sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS Act” for short).

3. The First Information Report came to be registered on 12/03/2019. Mr. Surve, Police Sub-Inspector (“PSI” for short) received secret information from the informant on 11/03/2019 that the applicant would be carrying a

contraband substance in white Swift Desire car. Accordingly, PSI Surve who received the information communicated the same to his superior officer Mr. Kadam, Police Inspector ("PI" for short). In the station diary, an entry is made at 12.45 hours on the say of PI Kadam that PSI Surve informed him that based on secret information the applicant would be carrying contraband in a white Swift Desire car. This information was reduced in writing in the station diary on the say of PI Kadam though the information was actually received by PSI Surve.

4. Learned counsel for the applicant contends that there is a breach of the provision of section 42 of the NDPS Act, as the information has not been reduced in writing by PSI Surve who was the recipient of the secret information. According to him, the station diary entry is recorded as per the say of PI Kadam who was not the recipient of the secret information. He submits that entry in the station diary cannot be said to be a writing within the meaning of section 42(2) of the NDPS Act.

5. On record is produced a communication dated 11/03/2019 addressed by PI Kadam to his immediate

superior i.e. the Deputy Commissioner of Police, (Detection) Crime Branch, that based on a secret information, the applicant would be carrying contraband Mephedrone (M.D.) in a white Swift Desire car for sale. The applicant was arrested on 12/03/2019 and found in possession of the 200 gms of M.D.

6. There is nothing on record to indicate that the information received by PSI Surve has been reduced by him in writing and the copy of such information is forwarded to the immediate superior officer in compliance with sub-section (2) of section 42 of the NDPS Act. Assuming that the information recorded in the station diary as per the say of PI Kadam could be said to be in compliance with section 42(2) of the NDPS Act, even then the copy thereof is not sent to his superior officer. No doubt, the superior officer to PI Kadam has been informed about the information but the same cannot be said in compliance with sub-section (2) of section 42 of the NDPS Act. On the ground that there is a breach of section 42 of the NDPS Act, I have reasons to believe that the rigours of section 37 of the NDPS Act can be overcome in the present case.

7. There are as many as 16 criminal antecedents against the applicant. None of the antecedents are under the NDPS Act. In this view of the matter, there does not appear any possibility that the applicant will indulge in a similar offence in future. Apart from what is stated hereinbefore, it also needs to be considered that the applicant is in custody for more than 3 years and 11 months. The investigation is complete and the charge-sheet has been filed. The trial is not yet commenced and even the charge has not been framed so far. The trial is likely to take a long time to conclude. The applicant can be released on bail by imposing some stringent conditions. Hence, the following order.

ORDER

(a) Applicant- Umer Usman Khan in connection with C.R. No.42 of 2019, registered with Kasa Police Station, Palghar, shall be released on bail, on his furnishing P.R. Bond of Rs.1,00,000/- with one or more local sureties in the like amount;

(b) The applicant shall report to the concerned police station twice a month i.e. on the first and third Saturday between 11.00 a.m. and 1.00 p.m, commencing March-2023;

(c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence;

(d) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change;

(e) Except to attend the police station and trial Court on the dates fixed, the applicant shall remain within the area of Mumbai and shall not leave Mumbai without prior permission of the trial Court.

8. The application stands disposed of.

(M. S. KARNIK, J.)