

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3845 OF 2022**

Mohd. Zaman Mohd. Sharif ShaikhApplicant

Versus

The State of Maharashtra ...Respondent

Mr. Anil G. Lalla with Mr. Aditya Singh i/b. Lalla i/b. Lalla and Lalla,
Advocates for the Applicant.

Ms. Anamika Malhotra, APP for Respondent-State.

CORAM : SHIVKUMAR DIGE, J.

DATE : 31st AUGUST, 2023.

P.C. :

1. By this application, applicant is seeking bail in Crime No. I-392 of 2021 registered with Kashimira Police Station for offences punishable under Sections 8(c), 21 (c) and 29 of the Narcotic Drugs and Psychotropic Substances Act (for short "NDPS Act").

2. It is prosecution case that on 18th May 2021, the Officers of Crime Branch, Unit 1, Kashimira, were conducting inquiry about some suspected auto rickshaw drivers at Shivaji Chowk Rikshaw Stand by showing their photographs to the general public. At that

time, police allegedly noticed one person moving around in a suspicious manner with a small bag hung around his neck. This person was being watched by the police, when they noticed him removing a packet from his bag. Two persons approached him, he handed over the packet to one of them. Immediately thereafter those two persons left the spot with accused No.2 who kept the packet in his right side pant pocket. These three persons were surrounded by police and apprehended. A contraband was recovered from the custody of accused No.2. Thereafter, police lodged complaint against all accused persons.

3. It is contention of learned counsel for applicant that no contraband was found in possession of applicant. Accused in whose custody said contraband was found has been released on bail by this Court. Learned counsel further submitted that search was taken by Police Naik. As per government notification, Police Naik is not authorized to take search. Section 42 of the NDPS Act specifies person who has a right to take search. Learned counsel further submitted that as no contraband was found in possession of applicantm and co-accused in whose possession the contraband was found is released on bail, hence applicant is entitled for bail.

4. Learned APP vehemently submitted that applicant is not entitled for bail as role of each accused is different in NDPS cases. Though, no contraband was found in possession of applicant, as per prosecution case, he was holding the bag and he took out the packet from bag and gave it to other accused. It means, he was holding the contraband. It shows his involvement in the crime. Personal search taken by police naik, cannot vitiate the case. Hence, requested to dismiss the application.

Learned APP relied on *Union of India through Narcotics Control Bureau, Lucknow versus Md. Nawaz Khan reported in 2021 (10) SCC 100, State of Himachal Pradesh versus Sunil Kumar reported in 2014 AIR(SC) 2564 and Babubhai Odhavji Patel versus State of Gujarat reported in (2005) 8 SCC, 725.*

5. I have heard both learned counsel. Admittedly no contraband was found in possession of the applicant. This Court (Coram : M. S. Karnik, J) by order dated 7th February 2023 has granted bail to the accused No.2 - Arif Shaikh in whose possession contraband was found.

6. In my view, co-accused who is released on bail and applicant are accused in the same crime. There is allegation of

conspiracy also. If allegation of conspiracy is there, applicant would stand on the same footing with that of co-accused. Moreover, no contraband was found in possession of applicant when search was taken. Applicant has no criminal antecedents.

7. In view of above, I pass following order :

- (i) Applicant be released on bail in Crime No. I-392 of 2021 registered with Kashimira Police Station on furnishing P.R.Bond of Rs.50,000/- with one or more local sureties in the like amount;
- (ii) 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. Applicant shall not tamper with evidence;
- (iii) On being released on bail, next Saturday onwards, Applicant shall report to the concerned police station twice a month, on alternate Saturdays, between 11.00 a.m. and 1.00 p.m.;
- (iv) 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.

8. Application is made absolute in above terms and disposed off.

(SHIVKUMAR DIGE, J.)