

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.550 OF 2024

Tousif Hanif Qureshi	...Applicant
vs.	
The State of Maharashtra	...Respondent

Ms. Lochan Chandka, for the Applicant.
Ms. Ranjana Humane, APP, for the Respondent/State.
Mr. A.D.Lande, PSI, Kashimira police station.

CORAM : N. J. JAMADAR, J.
DATE : APRIL 17, 2024

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.
2. The applicant, who is arraigned in C.R. No. 333 of 2023 registered with Kashimira police station for the offences punishable under sections 21(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act, 1985), seeks to be enlarged on bail.
3. Pursuant to an intimation, on 5th May, 2023 Kashimira police conducted a surveillance near Reti Bundar. On 1.30 am on 6th May, 2023 Ali Azgar Bhadela (accused No. 1) and Kamarjaha Shaikh (accused No. 2), whose features matched the description given by informant, came near Reti Bundar. They were accosted. After complying with the mandate contained in section 50 of the NDPS

Act, 1985, in the search of Ali Azgar Bhadela (accused No. 1), 10 gm Mephedrone (MD) was found. In the search of Kamarjaha Shaikh (accused No. 2) a plastic bag with zip lock containing a white substance was found. It appeared MD. It weighed 95 gms.

4. Ali Azgar Bhadela (accused No. 1) and Kamarjaha Shaikh (accused No. 2) disclosed that they had procured the contraband from Tajuddin Shaikh (accused No. 3), the husband of Kamarjaha Shaikh (accused No. 2). Tajuddin Shaikh (accused No. 3) came to be arrested. During the course of investigation, it transpired that the accused had procured the contraband from Tausif Qureshi, the applicnat /accused No. 4. Thereupon, the applicant came to be arrested on 27th July, 2023.

5. In the personal search of the applicant, no contraband was found. However, a mobile phone handset with sim card No. 9987096242 was seized. The analysis of the data in the said mobile indicated that the applicant was in touch with a Nigerian and other two persons. The applicant and those persons had shared the photographs of contraband substance. There were chats which indicated that money was demanded by the Nigerian, who had also forwarded a QR code to make the payment. It also appeared that there was a financial transaction with another person. Post completion of investigation, charge sheet came to be lodged.

6. Ms. Chandka, learned counsel for the applicant, submitted that the applicant has been roped in on the basis of the statement of the co-accused only. No contraband was recovered from the possession of the applicant. The endeavour of the prosecution to implicate the applicant on the strength of the CDR, UPI payment and photographs of the alleged contraband articles is unsustainable as the chats would indicate that those do not pertain to the sim card which was allegedly found in the mobile phone handset seized from the applicant. It was further submitted that the screen shots would indicate that they pertain to the period post the arrest of the applicant and the seizure of the mobile phone, under panchanama dated 27th July, 2023.

7. As against this, Ms. Humane, the learned APP, submitted that there is ample material to show that the applicant has been involved in illicit drug trafficking. Inviting attention of the Court to the screen shot of the photographs and chat retrieved from mobile phone handset of the applicant and the CDR, it was urged that an offence punishable under section 29 of the Act is, prima facie, made out. Therefore, the applicant does not deserve to be enlarged on bail.

8. Evidently, Ali Azgar Bhadela (accused No. 1) and Kamarjaha Shaikh (accused No. 2) were found in possession of 10 gm and 95 gms MD, respectively. Ali Azgar Bhadela (accused No. 1) and

Kamarjaha Shaikh (accused No. 2), had allegedly disclosed that Tajuddin Shaikh (accused No. 3), the husband of Kamarjaha Shaikh (accused No. 2), had supplied the said contraband to them. It is the prosecution case that Tajuddin Shaikh (accused No. 3) disclosed that he had procured the contraband from the applicant. It does not appear that any contraband was recovered from the possession of Tajuddin Shaikh (accused No. 3).

9. Prima facie, it appears that the applicant has been implicated primarily on the basis of the statement of co-accused. It is not the case that Ali Azgar Bhadela (accused No. 1) and Kamarjaha Shaikh (accused No. 2) who were found in possession of the contraband articles disclosed the name of the applicant as their supplier. To bolster up the case that the applicant was the supplier of Tajuddin Shaikh (accused No. 3), the prosecution banks upon the data retrieved from the mobile phone of the applicant and CDR. It is necessary to note the prosecution does not press into service, the chats or financial transactions between the applicant and Tajuddin Shaikh (accused No. 3).

10. Indeed, reliance has been placed on the CDR. Prima facie, there appears to be uncertainty about the Sim which was being purportedly used by the applicant. The panchanama dated 27th July, 2023 records that a sim card number, which is different from

the sim card allegedly retrieved from the mobile of the applicant. In any event, in the absence of any other material, the printout of whatsapp messages downloaded from the mobile phone device can not, by themselves, establish a live link between the applicant and the co-accused.

11. Reliance placed by Ms.Chandka on an order passed by the Supreme Court in the case of **Bharat Chaudhary vs. Union of India**¹ appears to be well founded. In the said case, it was enunciated that reliance on the printouts of Whatsapp messages downloaded from the mobile phone and devices seized from the office premises of A-4 cannot be treated at that stage, as sufficient material to establish a live link between - accused No. 4 - the applicant therein and accused Nos. 1 to 3 even when, as per the prosecution, scientific reports in respect of the said devices were still awaited.

12. In the aforesaid view of the matter, I am impelled to hold that there is a substantial probable cause to hold that the accused may not be guilty of the offences. It is not the prosecution case that the applicant has antecedents. The twin test thus stand satisfied. I am, therefore, inclined to allow the application.

Hence, the following order.

1 Petition for Sp.Leave to Appeal (Cri) No. 5703 of 2021.

ORDER

- 1] The application stands allowed.
- 2] The applicant Tousif Hanif Qureshi be released on bail in C.R. No. 333 of 2023 registered with Kashmirira police station, on furnishing a P.R. Bond of Rs. 1,00,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at Kashmirira police station on the first Monday of every month between 11 am to 1 pm for a period of three years or till conclusion of the trial, whichever is earlier
- 4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.
- 5] 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.
- 6] The applicant shall regularly attend the proceedings before the jurisdictional Court.
- 7] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an

expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)