



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.665 OF 2024**

Dindayal Lalbabu Varma	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. Abhinav J. Dubay with Mr. Siddharth Tripathi Mr. Shilpesh Kabadi for Applicant.
Mrs. Ranjana Dinesh Humane, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 22 FEBRUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application for bail in connection with C.R.No.92 of 2023 registered with Naupada Police Station, Thane, for the offences punishable under Sections 8(c) and 22(c) of the Narcotics Drugs and Psychotropic Substances Act, 1985.
3. On 15 March 2023, a secret information was received that a suspect was to arrive near Teen Petrol Pump, Naupada, Thane to sell 45-50 gms of mephedrone. Accordingly, Naupada Police conducted a surveillance at the said spot along with the panch witnesses. At about 9.35 p.m., the applicant was found approaching towards the petrol pump. The movements of the applicant appeared suspicious. The applicant was accosted. As the police party suspected that the applicant was in possession of contraband articles, he was apprised of his right to be searched in the presence of a

Gazetted Officer or a Magistrate under Section 50 of the Act. The applicant gave consent for being searched in the presence of the raiding party. In the personal search of the applicant, a big plastic bag containing a brown substance was found. It appeared mephedrone (MD). It weighed 51 gms. The applicant was arrested.

4. Learned Counsel for the Applicant submitted that even if the prosecution case is taken at par, the applicant cannot be said to have been found in possession of commercial quantity of the contraband article. Learned Counsel compared and contrasted the contents of the seizure panchanama and the inventory conducted before the learned Magistrate under Section 52-A of the Act. It was submitted that at the time of the alleged seizure, the contraband article was weighed along with the plastic bag and at the time of inventory before the learned Magistrate also, the alleged contraband article was weighed along with the envelope. The applicant, therefore, cannot be said to have been found in possession of the commercial quantity of the contraband.

5. Attention of the court was invited to an order passed by this Court in BA No.291 of 2023 dated 1 November 2023 wherein having regard to the marginal excess quantity having been allegedly found in possession of the accused therein, this Court had granted bail.

6. Learned APP resisted the prayer for bail. It was submitted that the applicant was found possession of commercial quantity of MD and, therefore, rigour

contained in Section 37 of the Act, would squarely apply.

7. I have carefully perused the allegations in the FIR and the assertions in the seizure panchanama. Prima facie, it appears that the applicant was allegedly found in possession of contraband article kept in a big plastic bag. The raiding party had weighed the substance along with the plastic bag. It weighed 51 gms. Inventory panchanama (page 88) records as under :

“Today’s total weight of Mephedrone (MD) Drugs along with one plastic pouch of green colour envelope covered is 48 gm i.e. Exhibit A and one sample with Green envelope along with plastic pouch of 02 gm i.e. Exhibit A-2. The consignment of the seized goods related to the case presented before me to certify the correctness of the above inventory. Thereafter, both the samples have been sealed before me and measured their weight. After measurement of sealed envelopes and open muddemal are clicked before me and photographs are also certified by me. Mudeemal is properly sealed before me after verification. Empty envelopes are also sealed in muddemal envelope.”

8. Evidently, before the learned Magistrate, the bulk weighed 48 gms and the sample weighed 2 gms. However, both the bulk and the sample were weighed along with the envelopes. Copies of two photographs annexed to the inventory panchanama (pages 89 and 90) indicate that the contraband along with the pouch weighed 48 gms and 46 gms., respectively.

9. In the aforesaid view of the matter, there is substance in the submission on behalf of the applicant that the question whether the quantity found in possession of the applicant was a commercial quantity, is debatable.

10. The applicant is in custody since 15 March 2023. It is unlikely that the trial can be concluded within a reasonable period.

11. Thus, I am inclined to exercise the discretion in favour of the applicant.

12. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Dindayal Lalbabu Varma be released on bail in C.R.No.92 of 2023 registered with Naupada Police Station, Thane, on furnishing a PR bond in the sum of Rs.50,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence at Naupada Police Station on first Monday of every alternate month between 11 am to 1 pm for a period of two years or till the conclusion of the trial whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence. 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.

(v) 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.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) The applicant shall not indulge in the identical activity for which he has been arraigned in the instant case.

(viii) 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.)