

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1105 OF 2021

Najmulhasen G. Mulla

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Taraq Sayed a/w Ms. Ashwini Achari, Ms. Alish Parekh, Ms. Bhumika Ggada, Mr. Devashish Dhanjode i/b. Mr. Sarfaraz Khalife:	Advocate for Applicant.
Mr. H.J. Dedhia:	APP for State.

CORAM : S. M. MODAK, J.
DATE : 9th MAY 2024

P. C. :-

1. Heard learned Advocate Mr. Sayed for the Applicant and learned APP.
2. It is true that this applicant came to be arrested on 13th December 2019 and the FIR is registered on 15th November 2019 with the Thane Nagar Police Station under Section 8(c) and 22(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985. First accused arrested is Gulzar Allabaksh Pasha. Thereafter, few more accused were arrested during that custodial interrogation involvement of the present

applicant is disclosed. He is arrested from his native place West Bengal. During the custodial interrogation, at first instance, methamphetamine 1884 in numbers costing Rs.47,10,000/- were seized. There is a statement recorded of the owner of the house wherein he has kept those pills. He is from Mumbra. Instead of emphasizing on other aspects, Mr. Sayed emphasized on delay in trial. He read over the roznama dated 2nd May 2024 from the trial Court even the charge is not framed. It also indicates that NBW is pending.

3. It is true that this Court has taken a different view about interpretation of provisions of Section 52(A) of the N.D.P.S. Act while deciding Bail Application No.1804 of 2023 passed on 11th August 2023. This Court has held that merely because samples are taken at the spot there is no violation of the provisions of Section 52(A) of the N.D.P.S. However, bail was granted considering the period undergone. According to Mr. Sayed learned Single Judges of this Court have taken different view and considering the lacuna of the investigating agency in taking the samples at the spot and not before the Magistrate. He also invited my attention to the observations in paragraph No.88 of Satender

*Kumar Antil vs Central Bureau Of Investigation*¹, wherein the observations in the Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) vs. Union of India were reproduced. Direction (iii) mentions that when minimum imprisonment is of ten years and minimum fine of Rupees One Lakh then such person shall be released on bail if he has been in jail for not less than five years.

4. It is true that even though that condition of punishment is satisfied yet Applicant has not remained in jail for 5 years. However, the fact remains that all the accused are granted bail except this applicant. He has already remained in jail for 4½ years. There are no chances of proceeding with the trial in near future.

5. Considering the fact that Non-bailable Warrant was issued by the trial Court, the Applicant can be asked to furnish local surety. Hence, the order:-

ORDER

(i) Applicant - Najmulhasen G. Mulla arrested in N.D.P.S.

Case No.301 of 2020 for the offence punishable under

Sections 8(c) and 22(b) of the Narcotic Drugs and

1 . 2022 (10) SCC 51

Psychotropic Substances Act, 1985 be released on bail on furnishing P.B. and S.B. of Rs.1,00,000/- (Rupees One Lakh Only).

- (ii) Local surety from Thane District be furnished.
- (iii) Applicant is directed to attend trial Court punctually. In case of failure to attend his bail will be liable to be cancelled.
- (iv) Bail Application is disposed of.

[S. M. MODAK, J.]