

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 881 OF 2024

SANTOSH
SUBHASH
KULKARNI

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Date: 2024.03.04
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Shahrukh Ashraf Khan ...Applicant

Versus

Union of India & anr. ...Respondents

Ms. Zehra Charania, a/w Ms. Mallika Sharma, for the
Applicant.

Mr. Shreeram Shirsat, Special PP a/w Karishma Rajesh,
Nishad Mokashi and Shekhar Mone, for Respondent
No.1/UOI.

Mrs. Geeta Mulekar, APP for the State/Respondent No.2.

CORAM: N. J. JAMADAR, J.

DATED: 4th MARCH, 2024

ORDER:-

1. Heard the learned Counsel for the applicant and the
learned Special PP for the State.

2. This is an application for releasing the applicant on
interim bail, in CR No.NCB/MZU/CR-24/2021 till 10th March,
2024 to facilitate the applicant to attend the marriage ceremony
of his sister.

3. A copy of the marriage invitation card is annexed to the
application at Exhibit-F.

4. Mr. Shirsat, the learned Special PP, submits that on
account of the short notice, the respondent is not in a position

to file a counter. Mr. Shirsat submitted that the applicant has been found in possession of 1.968 kg. MD, which is huge quantity if considered in the light of stipulation of 50 gm. as the commercial quantity. The applicant was also found in possession of other contraband articles. Therefore, in the event, the Court is inclined to grant bail to the applicant to attend the marriage of his sister, the applicant be permitted to attend the ceremonies under the police escort only. It was submitted that there is an apprehension that the applicant may abscond.

5. The learned Counsel for the applicant, on the other hand, submitted that the applicant has been in custody since 25th March, 2021. It is submitted that the mother of the applicant has passed away and the applicant is the guardian of his sister, whose marriage is to be solemnized on 5th March, 2024. Attention of the Court was invited to an order passed by this Court in Interim Application No.4002 of 2023 in Bail Application No.2835 of 2023 (Hussainbi Faqeer Shaikh vs. Union of India and anr.), whereunder the applicant therein was released on bail.

6. In a situation of this nature, where interim bail is sought to attend the marriage of a near relative, the Court is required to adopt a considerate approach. The applicant has been in

custody for almost three years. The application is supported by a copy of the invitation card. It seems the marriage is proposed to be registered with the Marriage Registrar and the Registrar has approved the visit for registration on 5th March, 2024. Copy of Death Certificate indicates that the mother of the applicant has passed away. *Prima faice*, there is material to indicate that the marriage of the sister of the applicant is scheduled to be solemnized tomorrow.

7. Initially the applicant had prayed for bail from 29th February to 10th March, 2024. The learned Counsel for the applicant now submits that as the marriage is to be solemnized tomorrow, the applicant be released till the morning of 8th March, 2024.

8. In the totality of circumstances, I find the prayer justifiable.

9. As regards the apprehension expressed by Mr. Shirsat, the Court is not informed that the applicant has an antecedent under the Narcotic Drugs and Psychotropic Substances Act, 1985, ("NDPS Act, 1985"). Mr. Shirsat fairly submitted that he has no concrete instructions but one crime has allegedly been registered against the applicant. Ms. Charania, the learned Counsel for the applicant, submitted that, according to her

instructions, no crime under NDPS Act, 1985 has been registered against the applicant.

10. The fact that the applicant has been in custody for almost three years deserves due consideration. Grant of bail under escort to attend the marriage ceremony of the sister of the applicant, in the circumstances of the case, does not seem expedient. Instead I deem it appropriate to release the applicant on interim bail for three days with a direction to mark presence on 6th March, 2024 at DN Nagar Police Station between 10.00 to 11.00 am. and furnish the contact number to the NCB, Mumbai, so that the applicant's location be tracked, if required. Since the marriage is to be solemnized tomorrow, I deem it expedient to grant liberty to furnish cash security in lieu of surety.

11. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on interim bail in C.R. No.NCB/MZU/CR-24/2021 on furnishing a P.R. Bond in the sum of Rs. 1,00,000/- with one or two sureties in the like amount or cash security in lieu of surety, till 10.00 am. on 8th March, 2024.
- (iii) The applicant shall mark his presence at DN Nagar Police Station on 6th March, 2024 between 10.00 to 11.00 am.

(iv) The applicant shall surrender to Prison on 8th March, 2024 at 10.00 am.

(v) 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.

(vi) On being released on bail, the applicant shall furnish his residential address and contact number on which he shall be reachable to NCB, Mumbai.

(vii) The applicant shall not leave the limits of Mumbai city and suburban Districts during the said period.

Application disposed.

All concerned to act on an authenticated copy of this order.

[N. J. JAMADAR, J.]