

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1016 OF 2024

Asif Sharfuddin Khan

...Applicant

vs.

The State of Maharashtra

...Respondent

VISHAL
SUBHASH
PAREKAR

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VISHAL SUBHASH
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Date: 2024.04.25
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Mr. Atul Sarpande a/w. Mr. Kamlesh Satre i/b. Mr. Nilesh Bangar,
for the Applicant.

Mr. S.R. Agarkar, APP, for the Respondent/State.

Mr. S.D. Patil, PSI, Shivaji Nagar police station.

CORAM : N. J. JAMADAR, J.

DATE : APRIL 23, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant who is arraigned in C.R. No. 386 of 2023 registered with Shivaji Nagar police station for the offences punishable under sections 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act, 1985), seeks to be enlarged on bail.
3. On 27th April, 2023 Shivaji Nagar police were on patrolling duty. At about 5.30 pm they reached near Hindu Hridayasamrat Balasaheb Thakary Hospital, Govandi. They found two persons moving in suspicious manner. They were accosted. In the search of accused No. 1 Sannaulla Khan, 10 gm Mephedrone (MD) and in the search of accused No. 2 Sameera Khan, 10 gm MD was recovered. At the instance of accused No. 2 Sameera Khan another 10 gm MD

was recovered from his residence. From the search of accused No. 3 Asif Khan 22 bottles of Codeine were recovered. The contraband articles were seized.

4. During the course of interrogation, accused No. 3 Asif Khan made a disclosure that he had procured the contraband substance from the applicant. Thereupon, the applicant came to be arrested on 20th April, 2024. The applicant is sought to be roped in by invoking provision contained in section 29 of the NDPS Act, 1985.

5. Mr. Sarpande, the learned counsel for the applicant, submitted that there is no material to connect the applicant either with the contraband recovered from the possession of the co-accused or the co-accused. The applicant has been implicated solely on the basis of statement made by accused No. 3 Asif Khan which is not a legal evidence.

6. Mr. Agarkar, the learned APP, invited the attention of the Court to a disclosure statement made by the applicant to point out the place from where the applicant used to procure the contraband from his supplier Kalila and, in turn, supply the same to accused No. 3 Asif Khan. It was submitted that the applicant was supplier of accused No. 3 Asif Khan, and has been engaged in illicit drug trafficking.

7. From the perusal of the report under section 173 of the Code

of Criminal Procedure, 1973 and the documents annexed with it, it becomes evident that the applicant is roped in on the basis of the statement made by accused No. 3 Asif Khan. It is trite that the statement made by one accused against another accused is not legal evidence. In the case at hand, it is not the case that accused No. 3 Asif Khan has made any discovery leading to recovery to the effect the disclosure made on 29th April, 2024, prima facie appears to be bereft of any evidentiary value. Nothing could be discovered pursuant to the said disclosure statement.

8. It appears to be a case of no evidence qua the applicant as neither there are financial transaction, nor CDR or any other material to connect the applicant with accused No. 3 Asif Khan. The Court is not informed that the applicant has any antecedents. The interdict contained in section 37 of the NDPS Act, 1985 thus does not come into play.

9. I am, therefore, inclined to exercise discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application stands allowed.

2] The applicant be released on bail in C.R. No. 386 of 2023 registered with Shivaji Nagar 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 Shivaji Nagar 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.)