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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.1020 OF 2024

KHUSHBU @ UMME AMAN MUSTAQ ALI

SAYED

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Sherali S. Khan for the applicant.

Mr. S. H. Yadav, APP for the State.

PSI-S. D. Patil, Shivaji Nagar Police Station.

CORAM : M. S. KARNIK, J.

DATE : APRIL 24, 2024.

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.

2. This is an application for bail in respect of the offence punishable under Sections 8(c), 22(c), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter 'NDPS Act' for short) registered on 28.04.2023 vide C.R. No.390 of 2023 with Shivaji Nagar Police Station.

3. There are in all two accused. The applicant is the accused No.1. The applicant was arrested on 28.04.2023.

By an order dated 07.12.2023 the co-accused – Aafrin Salman Shaikh was enlarged on bail in Bail Application No.2907 of 2023. The relevant portion of the order reads thus :-

"2. This is an application for bail in respect of the offence punishable under Sections 8(c), 22(c), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter 'NDPS Act' for short) registered on 28.04.2023 vide C.R. No.390 of 2023 with Shivaji Nagar Police Station.

3. There are in all two accused. The applicant is the accused No.2. The applicant was arrested on 28.04.2023.

4. The respondents were on patrolling duty on 28.04.2023. They noticed the activities of some women which included the present applicant suspicious in nature. Accordingly, the empowered officer proceeded to search the applicant. Though several submissions are made by learned counsel for the applicant, I am satisfied that the present application can be decided on the basis of the submission made by the applicant that the search was not carried out by an authorised officer.

5. 12 plastic bottles of contraband 'Codeine Phosphate and Chlorpheniramine Melate Syrup' was recovered from the present applicant. The contraband is a commercial quantity. The total quantity found with the applicant is 1200 ml. The applicant thus was found in possession of 200 ml more than the minimum of the commercial quantity.

6. Learned APP opposed the application for bail. It is submitted that there is compliance with the provisions of the NDPS Act in respect of search and seizure. It is submitted that there is a compliance of Section 50 of the NDPS Act. It also submitted that the provisions of Section 42 of the NDPS Act are duly followed.

7. In the present case the search is carried out by a woman police constable. The notification dated 14.11.1985 issued by the Home Department in exercise of the powers conferred by sub-section (1) of Section 42 of the NDPS Act has empowered for the purposes of the said sub-section (1) all Police Officers of and above the rank of Head Constable in the State of Maharashtra. The search according to the panchanama was carried out by a woman police constable who is not empowered to carry out such search in terms of Section 42(1) of the NDPS Act. The applicant

therefore can be enlarged on bail. There are no criminal antecedents reported against the applicant. The applicant was arrested on 28.04.2023 and is now in custody for more than seven months. The investigation is complete and the charge-sheet has been filed. I am satisfied that the rigors of Section 37 of the NDPS Act can be overcome. It is unlikely that the applicant will commit any offence while on bail."

4. Learned APP opposed the application for bail.
5. The applicant was found in possession of 13 plastic bottles of contraband 'Codeine Phosphate and Chlorpheniramine Mellate Syrup'. For the same reasons as in the aforesaid order even the present applicant can be enlarged on bail. There are no criminal antecedents reported against the applicant. The applicant was arrested on 28.04.2023 and is now in custody for more than eleven months. The investigation is complete and the charge-sheet has been filed. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Khushbu @ Umme Aman Mustaq Ali Sayed in connection with C.R. No.390 of 2023 registered with Shivaji Nagar Police Station shall be released on bail on her furnishing P.R. Bond of Rs.50,000/- with one or more sureties in the like amount.

(c) The applicant is permitted to furnish cash bail surety in the sum of Rs.50,000/- for a period of 6 weeks in lieu of surety.

(d) The applicant shall attend the Investigating Officer of Shivaji Nagar Police Station once in three months every first Monday of the concerned month between 11:00 a.m. and 1:00 p.m. commencing May 2024.

(e) 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. The applicant shall not tamper with evidence.

(f) On being released on bail, the applicant shall furnish her contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(h) The applicant shall surrender her passport, if any, to the Investigating Officer.

6. The bail application is disposed of.

(M. S. KARNIK, J.)