

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1046 OF 2024

Ravish Istiyak Ansari ...Applicant

vs.

The State of Maharashtra ...Respondent

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WITH

BAIL APPLICATION NO.1782 OF 2022

Mohammad Jahid Ismail Abdul

Latif Shaikh ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Mithilesh Mishra i/b. Mr. Agastya Desai, for the Applicant in BA No. 1046 of 2024.

Mr. Dilip Mishra i/b. Mr. Ayaz Khan, for the Applicant in BA No. 1782 of 2022.

Mr. Tanveer Khan, APP for the State in BA No. 1046 of 2024.

Mr. Prashant Jadhav, APP for the State in BA No. 1782 of 2022.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 20, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. The applicants who are arraigned in C.R. No. 48 of 2020 registered with Anti Terrorist Squad, Unit IX, Mumbai for the offences punishable under sections 22(c) read with 8(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act, 1985) have preferred these application to enlarge them on bail.

3. The indictment against the applicants and the co-accused is

that a secret information was received on 8 December 2020 that co-accused Alpesh Kumar (accused No. 2) and Shahnawaj (accused No.1) would come near Raheja College Road, Daulat Nagar, Santacruz (W), Mumbai in a car bearing registration No.MH-04-JZ-369 to sell Mephedrone (MD). The Police conducted surveillance. At about 7.40 a.m., persons matching the description came at the said spot in the said car. They were accosted. They were apprised of their right to be searched in the presence of the Gazetted Officer or the Magistrate. As the co-accused Alpeshkumar (accused No. 2) and Shahanawaj (accused No. 1) gave consent for search by police, in the personal search of the co-accused Shahanawaj, 35 gms. MD, a contraband article, was found. It was seized and samples were collected. In the personal search of Alpesh Kumar (accused No. 2) 80 gms. MD was found. It was also seized and samples were collected.

4. During the course of investigation, it further transpired that the accused Nos. 1 and 2 procured the contraband substance from Mohd Jahid (accused No.3), the applicant in BA No. 1782 of 2022, and Ravish Ansari (accused No. 4), the applicant in BA No. 1046 of 2024. They were arrested.

5. Pursuant to the disclosure statement made by Ravish Ansari (accused No.4), Ranjan Mawar (accused No.5), who allegedly

supplied the contraband article was also arrested. The prosecution alleged that the applicants and the co-accused committed offences in pursuance of the criminal conspiracy punishable under Section 29 of the Act, 1985.

6. At the outset, the learned counsel for the applicants submitted that the co-accused Alpesh Kumar (accused No. 2) has been released on bail by this Court on 31st January, 2024. The applicants whose cases stand on an even better footing, are entitled to the same dispensation. It was further submitted that the applicants have been in custody since 6th January, 2021 and 30th April, 2021, respectively. The trial has yet not commenced. In addition to the ground on which the co-accused has been released on bail, on the ground of long incarceration also, the applicants deserve to be enlarged on bail.

7. The learned APP resisted the prayer for bail. While releasing the co-accused Alpesh Kumar (accused No. 2), this Court had, inter alia, noted that there was a total non-compliance of the provisions contained in section 52-A of the NDPS Act, 1985. In that context, this Court had observed, inter alia, as under:-

21] A case of complete non-compliance of Section 52-A and the one with material to indicate that there was a substantial compliance or there was still possibility of compliance of Section 52-A of the Act, in my view, stand on different footings. It is in the aforesaid context, reference to the decisions of the

Supreme Court in the case of Yusuf @ Asif V/s. State¹, and Simaranjit Singh V/s. State of Punjab², would be advantageous.

22] In the case of Yusuf @ Asif V/s. State (supra), the Supreme Court after following the decision in the case of Union of India V/s. Mohanlal³, enunciated, as under :

“16. In the absence of any material on record to establish that the samples of the seized contraband were drawn in the presence of the Magistrate and that the inventory of the seized contraband was duly certified by the Magistrate, it is apparent that the said seized contraband and the samples drawn therefrom would not be a valid piece of primary evidence in the trial. Once there is no primary evidence available, the trial as a whole stands vitiated.”

23] In the case of Simaranjit Singh V/s. State of Punjab (supra), the Supreme Court after extracting the observations in paragraphs 15 to 17 (extracted above) in the case of Union of India V/s. Mohanlal (supra), observed that the act of the officer drawing samples from all the packets at the time of seizure is not in conformity with the law laid down by Supreme Court Court in the case of Mohanlal (supra). That creates a serious doubt about the prosecution case that substance recovered was a contraband, and the Supreme Court, thus, set aside the judgment of conviction and sentence.

24] Reverting to the facts of the case, there is a total non-compliance of the provisions contained in Section 52-A of the Act. It is not even the case that the prosecution claims that it is in a position to comply with the mandate contained in Section 52-A of the Act, as the seized contraband in bulk is still available. In a situation of this nature, the decision of this Court in the case of Jabir Nader Ali vs. The State of Maharashtra⁴, appears to govern the facts of the case.

8. It would be contextually relevant to note that in a recent pronouncement in the **Mohammed Khalid and Another vs. The**

1 Cri. Appeal No. 3191 of 2023, Dt.13/10/2023.

2 2023 SCC Online SC 906.

3 (2016) 3 SCC 379.

4 BA No.303 of 2023 Dt. 04/12/2023.

State of Telangana⁵ the Supreme Court reiterated the imperativeness of the inventory and drawing of the samples before the Magistrate. It was in terms observed that in the absence of such collection of the samples before the Magistrate, the C.A report is bereft of any evidenciary value. It was, inter alia, observed as under:-

22] Admittedly, no proceedings under Section 52A of the NDPS Act were undertaken by the Investigating Officer PW-5 for preparing an inventory and obtaining samples in presence of the jurisdictional Magistrate. In this view of the matter, the FSL report(Exhibit P-11) is nothing but a waste paper and cannot be read in evidence. The accused A-3 and A-4 were not arrested at the spot. The offence under Section 20(b) (ii)(c) deals with production, manufacture, possession, sale, purchase, transport, import or export of cannabis. It is not the case of the prosecution that the accused A-3 and A-4 were found in possession of ganja. The highest case of the prosecution which too is not substantiated by any admissible or tangible evidence is that these two accused had conspired sale/purchase of ganja with A-1 and A-2. The entire case of the prosecution as against these two accused is based on the interrogation notes of A-1 and A-2.

(emphasis supplied)

9. The ground of long incarceration also weighed with this Court while releasing Alpesh Kumar (accused No. 2) on bail. In that regard, this Court had observed, as under:-

25] The applicant is in custody since 9 December 2020. More than three years have elapsed. It is unlikely that the trial can be completed within a reasonable period. It is well recognized that a long period of incarceration without a realistic possibility of conclusion of the trial within a reasonable period,

⁵ Cri. Appeal No. 1610 of 2023 Dt.01/03/2024.

melt down the rigors of statutory restrictions in the matter of grant of bail.

26] In a recent pronouncement, in the case of **Rabi Prakash V/s. State of Odisha**⁶ the Supreme Court observed as under :

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned Counsel for the Respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b) (ii) of the NDPS Act.”

10. Thus, in the peculiar facts of the case, in view of the aforesaid infirmity, the Court may be justified in drawing an inference that there are grounds to believe that the accused may not be guilty of the offences. The Court is not informed that there are antecedents of the applicants which justify an inference that if released on bail, the applicants would indulge in identical offences. The second condition can therefore be also said to have been fulfilled.

11. For the foregoing reasons, I am inclined to hold that the applicants, being the co-accused in the very crime, are entitled to identical dispensation.

12. Resultantly, the applications deserve to be allowed.

Hence, the following order :

6 2023 SCC Online SC 1109.

ORDER

- (i) The Applications stand allowed.
- (ii) The applicants Ravish Istiyak Ansari and Mohammad Jahid Ismail Abdul Latif Shaikh be released on bail in C.R.No. 48 of 2020 registered with DCB, CID Unit No.9 on furnishing a PR bond in the sum of Rs.1,00,000/- each and one or two sureties in the like amount, each to the satisfaction of the trial Court.
- (iii) The applicants shall mark their presence before DCB, CID Unit No.9 on first Monday of every 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 applicants shall not tamper with the prosecution evidence. The applicants 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 applicants shall furnish their contact numbers and residential address to the investigating officer and shall keep him updated, in case there is any change.

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

(vii) 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.

Applications disposed.

(N. J. JAMADAR, J.)