

those persons attempted to flee away. However, they were accosted. The applicant was one of them.

4. As the police party entertained suspicion that the applicant might be carrying contraband articles, the applicant and co-accused Kailaskumar were apprised of their right to be searched before the Gazetted Officer or the Magistrate. Both the accused declined to avail the said right.

5. In the personal search of the applicant, a plastic pouch was found. It contained off-white substance. It turned out to be Mephedrone (MD). It weighed 22 gm. In the search of accused No.2 Kailskumar also a plastic pouch was found. The said plastic pouch also contained a white substance. The said substance appeared to be MD. It weighed 30 gm. The contraband articles were seized. The applicant and co-accused were arrested.

6. Ms. Sawant, the learned Counsel for the applicant, submitted that the applicant was allegedly found in possession of 22 gm of MD only. The co-accused was found in possession of 30 gm of MD. However, there is no material to establish the nexus between the applicant and co-accused. Therefore, the applicant cannot be roped in by invoking the provisions contained in Section 29 of the NDPS Act, 1985. In

any event, the aggregate contraband found in possession of the applicant and the co-accused exceeds the commercial quantity by 2 gm only.

7. The learned Counsel for the applicant further submitted that the inventory under Section 52A of the NDPS Act, 1985 has not been carried out in conformity with the provisions of the NDPS Act, 1985 and Rules. There was delay in conducting the inventory as well as in forwarding the sample to FSL, post inventory. In the circumstances, the rigor contained in Section 37(1)(b)(ii) of the NDPS Act, 1985 may not be attracted.

8. As against this, the learned APP resisted the prayer for bail. It was submitted that since the applicant and the co-accused were apprehended together, the provisions contained in Section 29 of the NDPS Act are squarely attracted. The learned APP submitted that the ground of non-compliance of Section 52A does not merit countenance. Therefore, the application deserves to be rejected.

9. *Prima facie*, it appears that there is compliance of the provisions contained in Section 50 of the NDPS Act, 1985. The appraisal memo dated 18th July, 2023 (page 40) evidences the fact that the applicant was apprised of his right to be

searched before a Gazetted Officer or Magistrate and the applicant declined to avail the said right. As regards the delay in compliance of the provisions contained in Section 52A of the NDPS Act, 1985, it may be apposite to note that the authorized officer had sent the requisition on the very next day of the seizure i.e. 19th July, 2023 itself. The inventory was conducted before the learned Magistrate on 1st August, 2023. Thus, delay cannot be attributed to the investigating agency.

10. The next ground of delay in forwarding the sample to the FSL, post inventory, also does not merit acceptance. The inventory was conducted on 1st August, 2023. A sample was forwarded to the FSL on 2nd August, 2023 (page 80). Evidently, the dispatch of the sample on the next day of the inventory, cannot be said to be belated. Ms. Sawant attempted to canvass a submission that there is no evidence to indicate the safe keeping of the sample in the intervening period. The endorsements on the letters addressed to the storekeeper dated 1st August, 2023 and 2nd August, 2023 (page 76 to 79) *prima facie* indicate that the bulk and the sample were duly stored and retrieved from the *malkhana* (store).

11. The only issue which merits consideration is whether, in the circumstances of the case, Section 29 of the NDPS Act could be invoked. Evidently, the applicant and the co-accused were found in possession of the intermediate quantity of MD. The applicant was found in possession of 22 gm. Co-accused was found in possession of 30 gm. It is true, during the course of the inventory, the contraband article weighed 52 gm in aggregate. However, having regard to the marginal excess quantity of the contraband, in aggregate, the aspect as to whether commercial quantity of contraband was found in possession of the applicant and co-accused so as to attract the rigor of Section 37 of the NDPS Act, deserves consideration.

12. The prosecution banks upon the fact that the applicant and co-accused were apprehended together. It is further alleged that the CDR revealed that the applicant and the co-accused were in constant touch with each other. The Court cannot lose sight of the fact that it was a case of chance recovery. The applicant and the co-accused were allegedly found exchanging something which stoked the suspicion. The Court is not informed that the applicant has antecedents which may justify an inference that the applicant

has been dealing in illicit drug trade. In the circumstances, whether the intermediate quantity of MD seized from the applicant and co-accused individually, can be considered in aggregate so as to attract the rigor of Section 37 of the NDPS Act, 1985 appears debatable. Especially, in view of the fact that the aggregate quantity found in possession of the applicant and the co-accused exceeds marginally by 2 gm only.

13. In the aforesaid view of the matter, I am inclined to hold that, in the facts of the case, the rigor of Section 37(1)(b)(ii) may not be attracted. As noted above, the Court is not informed that the applicant has antecedents. I am, therefore, inclined to exercise the discretion in favour of the applicant.

14. Hence the following order:

: O R D E R :

- (i)** The application stands allowed.
- (ii)** The applicant be released on bail in NDPS Special Case No.104 of 2024 arising out of CR No.65 of 2023 registered with Anti Narcotic Cell (ANC), Mumbai, on furnishing a P.R. Bond of Rs.1,00,000/- with one or two sureties in the like amount.
- (iii)** The applicant shall mark his presence at ANC, Mumbai,

on the first Monday of every alternate month between 10.00 am. to 12.00 noon for a period of three years or till the conclusion of the trial, whichever is earlier.

(iv) 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.

(v) On being released on bail, 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.

(vi) The applicant 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.

Application disposed.

[N. J. JAMADAR, J.]