



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1050 OF 2024**

Salik Salam Qureshi

... Applicant

versus

The State of Maharashtra

... Respondent

Mr. Kamlesh M. Satre, for Applicant.

Mr. S.R.Aagarkar, APP for State.

API Shrikant Karkar, Bandra ANC.

CORAM: N.J.JAMADAR, J.

DATE : 13 MARCH 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant who is arraigned in Special Case No.237 of 2024 arising out of C.R.No.70 of 2023 registered with ANC Bandra Unit, Mumbai for the offences punishable under Sections 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the Act of 1985) has preferred this application to enlarge him on bail.
3. On 2 August 2023 at about 3.55 p.m., while ANC police were on patrolling duty at Mahim, one person was found moving suspiciously near Dilshad Restaurant. He was accosted. He identified himself as Farooque Sarwaiya (A1). He was apprised of his right to be searched in the presence of Gazetted Officer or a Magistrate under Section 50 of the Act of 1985. As he declined to avail the said right,

a search was carried out. A small pouch was found in the plastic bag which the accused No.1 was carrying. It contained mephedrone, and weighed 30 gms. Accused No.1 disclosed that he had purchased the said contraband article from Hanif Sarwaiya (A2). The accused No.1 led the police party to the house of Hanif Sarwaiya (A2). He was accosted. After complying with the provisions of Section 50 of the Act, his person was searched. A plastic pouch containing a substance was found in the pocket of the trouser of the accused No.2. It was mephedrone, and weighed 30 gms. Accused No.2 disclosed that he had purchased the said contraband article from Farhan @ Ferry. Accused No.2 further disclosed that the associate of Farhan was to come to deliver MD to him. Police party, thus, accosted Jashim Shaikh (A3) who had come to deliver MD. In his personal search, 40 gms MD was recovered.

4. Jashim (A3) volunteered to take the police party to Farhan. At about 8.40 p.m. at Sherly Rajan Road in front of Moon Craft Building, Jashim pointed out two persons, one of whom was Farhan @ Farry. Police party accosted those two persons. The applicant was one of them. It is alleged, after apprising the applicant of his right under Section 50 of the Act, 1985, the personal search of the applicant was conducted. In the search, a plastic pouch containing 25 gms MD was found with the applicant. Whereas, in the possession of Farhan (A5), 25 gms MD was found. The prosecution thus alleged that the applicant and the co-accused were the members of a drug cartel led by Accused No.5 Farhan, who had obtained contraband article from

Javed Shaikh, who is yet to be arrested.

5. Learned Counsel for the Applicant submitted that the applicant was not found in possession of commercial quantity of MD. The applicant was not named by the co-accused as the person who had supplied the contraband article to him. Co-accused have named Farhan (A5) as the person who was supplying drugs to them. The applicant has been roped in along with Farhan on the basis of recovery of 25 gms of MD from the Applicant, simultaneously with Farhan (A5). However, there is no prima facie material to rope in the applicant by invoking the provisions contained in Section 29 of the Act.

6. As against this, Mr. Aagarkar, learned APP resisted the prayer for bail. It was submitted that the applicant was apprehended with the contraband article along with Farhan (A5), the alleged supplier. Moreover, there are call records which indicate that the applicant had been in regular contact with the other co-accused as the total quantity recovered is about 150 gms, which is a commercial quantity, and, therefore, the interdict contained in Section 37 of the Act comes into play, submitted Mr. Aagarkar.

7. Prima facie, it appears that there is compliance of the provisions contained in Section 50 of the Act. It also appears that the learned Magistrate has conducted an inventory and issued certificate under Section 52A(3) of the Act. The question that wrenches to the fore is of the applicability of the provisions contained in

Section 29 of the Act. Evidently, 25 gms of MD which is not a commercial quantity was recovered from the possession of the applicant. The prosecution seeks to rope in the applicant as a member of a drug cartel led by Farhan (A5).

8. I have carefully perused the FIR and the panchanama. Prima facie, the sequence of events appears to be that the accused No.1 was apprehended as his movements appeared suspicious. From the possession of Accused No.1, 30 gms MD was seized. Accused No.1 named accused No.2 as his supplier. Again 30 gms MD was seized from accused No.2. Jashim (A3) was allegedly apprehended when he came to deliver contraband to accused No.2. In the search of Jashim, 40 gms MD was found. It is pertinent to note that both Mohd. Sarwaiya (A2) and Jashim (A3) named Farhan (A5) as the person who had supplied the contraband to them. Neither Mohd. Sarwaiya (A2), nor Jashim (A3) has named the applicant. The role attributed to the applicant appears to be that of being found in the company of Farhan along with the contraband articles.

9. In the circumstances, whether the applicant was also privy to the crime appears debatable, as none of the co-accused have named the applicant as their supplier. Evidently, the applicant was found in possession of 25 gms of MD. In the aforesaid view of the matter, the applicability of the interdict contained in Section 37 of the Act, 1985, appears to be contentious. The applicant has been in custody since 3 August 2023. Investigation is complete. Further detention of the applicant, having

regard to the role of the applicant, does not seem to be warranted.

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

11. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Salik Salam Qureshi be released on bail in C.R.No.70 of 2023 registered with ANC, Bandra Unit on furnishing a PR bond in the sum of Rs.1,00,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence before ANC, Bandra Unit on first Monday of every month in between 11 am to 1 pm for a period of two 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.)