

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1379 OF 2022

Irfan Mukul Shaikh	]	Applicant
Vs.		
State of Maharashtra	]	Respondent

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Mr. Vikas Chavan a/w Mr. Atul Sarpande a/w Mr. Kamlesh Satre,
for Applicant.

Mr. Mayur S. Sonavane, A.P.P, for Respondent – State.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 26th APRIL, 2024.

ORDER:

1. The applicant is being prosecuted by *Padgha* Police Station, Taluka *Bhiwandi*, District *Thane* for the alleged offences punishable under Sections 8 (c), 20 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “N.D.P.S Act”).
2. Now, to the facts.

3. On 9th December, 2019, Police Inspector – Suresh Manore called his officers and informed that two unknown persons would be arriving in a Black Honda City Car bearing registration No. MH 02 JP 4377 via Nashik Mumbai Highway who were carrying some contraband prohibited under the N.D.PS Act.

4. Based on the tip, a team was formed, *panchas* were summoned and they proceeded towards *Nashik* Mumbai High way. Around 17.40 hours, a Black Honda City Car as described hereinabove was seen arriving at the spot which was blocked by the respondent and it's officers.

5. On confronting both the passengers in the car, it revealed that one of them was the applicant and other was Sujit Suhas Yadav. During search of the vehicle, two plastic gunny bags were recovered in the trunk of the car containing 14.60 kgs and 16.40 kgs of Ganja. The said ganja was seized under *panchanama*.

6. Investigation was completed and charge-sheet has been filed.

7. An application moved before the Special Judge, N.D.P.S, Thane for bail was rejected on 10th March, 2022.

8. I heard Mr. Chavan, learned Counsel for the applicant and Mr. Sonavane, the learned A.P.P.

9. It can be seen from the record that there is no material to show whether the applicant was owner of the said car. There is also total non compliance of Section 50 of the N.D.P.S Act. The applicant was not served with any copy or notice under Section 50 of the N.D.P.S Act nor was he apprised of his right under the said provision. There is no Chemical Analyzer's report.

10. It reveals from the record that a communication made to the Chemical Analyzer on 11th December, 2019 was received by the Office on 12th December, 2019. The most important factor is that co-accused has already been granted bail by the Trial Court having similar role to that of the applicant and, therefore, the applicant seeks parity. There seems to be even no due compliance of Section 52A of the N.D.P.S Act.

11. In view of the decisions of the Supreme Court in the case of **Union of India Vs. Mohan Lal and another¹** and **Simrnjit Singh Vs. State of Punjab²**, this is a fit case in which the applicant can be released on bail. It can, thus, be said that there are reasonable grounds for believing that the applicant is not guilty and would not commit any offence in case of his release on bail. Hence, the following order;

: ORDER :

- (a) The application is allowed.
- (b) The applicant – Irfan Mukul Shaikh be released on executing a P.R bond in the sum of Rs.20,000/- with one or two sureties in the like amount to the satisfaction of the Special Judge (NDPS), Thane in Special Case No.164 of 2020 arising out of C.R. No. I -342 of 2019 for the offences punishable under Sections 8 (c), 20 and 22 of the N.D.P.S Act.

1 (2016) 3 Supreme Court Cases 379

2 2023 SCC Online SC 906

(c) The applicant shall report the concerned Police Station on first Saturday of every month between 10.00 a.m and 1.00 p.m till the charge is framed;

(d) After framing the charge, applicant shall attend the Trial Court scrupulously, unless exempted from appearance;

(e) The applicant shall not tamper with the evidence or attempt to influence or contact any of the witnesses or persons concerned with this case;

(f) The applicant shall surrender his passport, if any, to the Investigating officer immediately;

(g) The applicant shall furnish his residential address and contact details to the respondent and the Trial Court immediately after his release. In case of change in contact details or residential address, same shall be forthwith informed to the Respondent and the Trial Court.

(h) In case of breach of any of the conditions hereinabove, liberty to the respondent to seek cancellation of bail of the applicant.

12. Application stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]