



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

BAIL APPLICATION NO. 1259/2023

MOHD JAFFAR ABDUL KALAM

SIDDIQUI

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Ayaz Khan i/b Adv. Zehra Charania for the Applicant.

Dr. Birendra Saraf, Advocate General a/w Adv. Vilasini
Balsubramanian a/w Smt. Sangeeta D. Shinde, APP for the
State.

CORAM : M. S. KARNIK, J.

**RESERVED ON : APRIL 26, 2024
PRONOUNCED ON : MAY 02, 2024**

P.C.:

1. Heard learned counsel for the applicant and learned Advocate General for the State.
2. This is an application for bail in respect of the offence punishable under Sections 8(c) read with 20(c) and 29 Narcotic Drugs and Psychotropic Substances Act, 1985, (hereafter 'NDPS Act' for short) registered on 13/07/2021 vide C.R. No.59 of 2021 with ANC, Bandra Unit, Mumbai.
3. It is the case of the prosecution that on 13/07/2021,

the officers of ANC, Bandra Unit while on patrolling duty, found one person near Ambika Society, besides Kalyangram Society, Gavdevi Dongar, Andheri (West), Mumbai, moving in a suspicious manner. The person who came to be apprehended is Samir Shabbir Shaikh i.e. accused No.2. He was found in possession of 800 gms of contraband purported to be 'Charas' which was kept in a blue coloured cloth bag. During the interrogation, he disclosed the involvement of the present applicant. A trap was laid and the applicant was apprehended. The search of the applicant resulted in the recovery of 1.225 Kg of contraband purported to be 'Charas' kept in a red coloured cloth bag. The charge-sheet was filed.

4. Several contentions are raised by the learned counsel for the applicant. It is submitted that there is breach of mandatory compliance under Section 42 and Section 50 of the NDPS Act.

5. The application is opposed by the learned Advocate General. It is submitted that the applicant was found in possession of a commercial quantity of contraband and

hence, rigours of Section 37 of the NDPS Act have to be fulfilled by the applicant if he seeks enlargement on bail. Having heard learned Advocate General's response, *prima facie*, I did not find much substance in the submission of the learned counsel for the applicant as regards any breach of Section 42 or Section 50 of the NDPS Act. These are *prima facie* observations not to influence the trial Court.

6. The minimum of the commercial quantity of contraband 'Charas' prescribed by notification is 1 Kg. The applicant was found in possession of 225 gms more than the minimum of the commercial quantity prescribed by the notification under the NDPS Act. Suffice it to observe that the applicant was arrested on 13/07/2021 and is now in custody for more than 2 years and 9 months as an undertrial. The charge is not yet framed. The trial will take a long time to conclude. Moreover, the applicant was found in possession of 1.225 Kg of contraband which was 225 gms more than the minimum of the commercial quantity prescribed by the notification under the NDPS Act. There are no criminal antecedents reported against the applicant.

In the facts and circumstances of the present case, I am of the *prima facie* view that the rigours of Section 37 of the NDPS Act can be overcome. However, I propose to impose stringent conditions. Hence, the possibility of the applicant committing any offence while on bail during the pendency of the trial is unlikely. The investigation is complete and the charge-sheet is filed. The applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Mohd. Jaffar Abdul Kalam Siddiqui in connection with C.R. No.59 of 2021 registered with ANC, Bandra Unit shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one or more sureties in the like amount.
- (c) The applicant shall attend the Investigating Officer of ANC Bandra Unit, once in a month, on the first Monday of every month, between 11.00 a.m. and 1.00 p.m.
- (d) 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.

(e) 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.

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

(g) The applicant shall surrender his passport to the investigating officer. If the applicant does not have a passport, the applicant shall file an affidavit before the trial Court to that effect prior to his release.

7. The application is disposed of.

(M. S. KARNIK, J.)