

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1413 OF 2024

Kailashkumar Meghwal ...Applicant
Versus
The State of Maharashtra ...Respondent

Ms. Alisha Parekh, a/w Ashwini Achari, i/b Taraq Sayed, for
the Applicant.

Mr. R. M. Pethe, APP for the State/Respondent No.1.

API Shrikant Karkar, Bandra ANC, present.

CORAM: N. J. JAMADAR, J.

DATED: 17th APRIL, 2024

PC:-

1. Heard the learned Counsel for the applicant and the
learned APP for the State.

2. The applicant, who is arraigned in NDPS Special Case
No.104 of 2024 arising out of CR No.65 of 2023 registered
with Anti Narcotic Cell (ANC), Mumbai, for the offences
punishable under Sections 22(c) and 29 of the Narcotic Drugs
and Psychotropic Substances Act, 1985 ("the NDPS Act") has
preferred this application to enlarge him on bail.

3. At the outset, the learned Counsel for the applicant
submits that co-accused Shahanawaj Mohammad Shamim
Siddhiqui has been released on bail by an order dated 13th

March, 2024. The said co-accused was allegedly found in possession of 22 grams of MD, whereas the applicant was found in possession of 30 grams of MD. The applicant, being similarly circumstanced, is also entitled to bail.

4. Mr. Pethe, the learned APP, fairly submitted that the reasons which weighed with this Court in releasing the co-accused on bail may apply with equal force to the applicant. However, since the applicant is a resident of Rajasthan, appropriate conditions be imposed.

5. While releasing the co-accused Shahanawaj Siddiqui on bail this Court had *inter alia* observed as under:

“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.”

6. On parity of reasons, the applicant is entitled to the same dispensation. I am, therefore, impelled to allow the application.

7. Hence the following order:

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant be released on bail 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 in the sum 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) The applicant shall surrender his passport. If the applicant does not hold the passport, the applicant shall file an affidavit to that effect, before the Special Court.

(vi) 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.

(vii) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(viii) 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.]