

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1614 OF 2024

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Mohammed Farooq Abdul Sattar Sarvaiya ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Kamlesh Satre, for the Applicant.
Ms. Gauri Rao, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.
DATED: 17th APRIL, 2024

ORDER:-

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.237 of 2024 arising out of CR No.70 of 2023, registered at ANC, Bandra Unit, Mumbai, for the offences punishable under Sections 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act, 1985"), has preferred this application to enlarge him on bail.
3. On 2nd August, 2023 at about 4.15 p.m. while ANC Police were on patrolling duty at Mahim, the applicant was found moving suspiciously near Dilshad Restaurant. The applicant was accosted. He was apprised of his right to be

searched in the presence of the nearest Magistrate or Gazetted Officer. The applicant declined to avail the said right. Upon the search of the applicant, a small pouch containing a white substance was found. It appeared to be Mephedrone (MD). It weighed 30 grams.

4. Pursuant to the disclosure made by the applicant, co-accused Mohammed Hanif Habib Sarvaiya (A2) came to be apprehended. 30 gram MD was found from the possession of Hanif Habib (A2). Pursuant to further disclosure made by Hanif Habib (A2), Jashim Javed Shaikh (A3), who had allegedly come to deliver contraband was apprehended with 40 gram of MD. Jashim Javed (A3) volunteered to take the police party to Farhan Salim Shaikh (A5). In the possession of Farhan (A5), 150 gram MD was found. Farhan (A5) was accompanied by Salik Qureshi (A4) in whose possession 25 gram MD was found.

5. The prosecution alleges that the applicant and co-accused were members of the drug cartel led by Farhan (A5), who had obtained the contraband articles from Jashim Javed (A3), who has been arrested.

6. The learned Counsel for the applicant submitted that co-accused Salik Qureshi (A4), who was found in possession

of 25 gram of MD, has been released on bail by this Court by an order dated 13th March, 2024. The applicant, also having been allegedly found in possession of an intermediate quantity of MD, is entitled to the same dispensation.

7. The learned APP resisted the prayer for bail. The learned APP submitted that though an intermediate quantity of MD was found in possession of the applicant, there is material to claim that the applicant was a member of the drug cartel. Therefore, the applicant does not deserve to be enlarged on bail.

8. While releasing co-accused Salik Qureshi (A4), this Court had, *inter alia*, observed as under:

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.”

9. The aforesaid reasons which weighed with this Court apply with equal force to the claim of the applicant for bail. There is material to indicate that the applicant was found in possession of 30 grams of MD and the search and seizure *prima facie* appeared to be in conformity that the provisions of the NDPS Act, 1985. However, whether the applicant can be roped in by invoking the provisions contained in Section 29 of the NDPS Act appears debatable and a matter for trial. In that view of the matter, *prima facie* the interdict contained in Section 37 of the NDPS Act, 1985 may not be attracted. I am, therefore, inclined to exercise discretion in favour of the applicant.

10. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant Mohammed Farooq Abdul Sattar Sarvaiya be released on bail in CR No.70 of 2023, registered at ANC, Bandra Unit, Mumbai, on furnishing a P.R. Bond in the sum of Rs.1,00,000/- with one or more sureties in the like amount to the satisfaction of the trial court.
- (iii) The applicant shall mark his presence ANC, Bandra Unit, on the first Monday of every alternate month between 11.00 a.m. to 1.00 p.m. for the period of three years or till 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 stands disposed.

[N. J. JAMADAR, J.]