

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1640 OF 2024

Mohammed Hanif Habib Sarvaiya ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Kamlesh Satre, for the Applicant.
Mr. S.R. Agarkar, APP, for the Respondent/State.
Mr. Shrikant Karkar, API, ANC Bandra Unit.

CORAM : N. J. JAMADAR, J.

DATE : APRIL 18, 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 2nd 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 Mohd. 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 the applicant. The accused No.1 led the police party to the house of the applicant.

4. The applicant was accosted. After complying with the provisions of Section 50 of the Act, the applicant was searched. A plastic pouch containing a substance was found in the pocket of the trouser of the applicant. It was mephedrone. It weighed 30 gms. The applicant disclosed that he had purchased the said contraband article from Farhan Shaikh @ Ferry. The applicant further disclosed that an associate of Farhan Shaikh was to come to deliver MD to him. Police party, thus, accosted Jashim Shaikh (A3), who had come to deliver MD. In the latter's personal search, 40 gms MD was recovered.

5. Pursuant to the disclosure made by Jashim Shaikh (accused No. 3), the co-accused Saleeq Qureshi (accused No. 4) and Farhan Shaikh (accused No.5) were arrested. 25 gm MD was found in possession of Saleeq Qureshi (accused No. 4) and Farhan Shaikh (accused No.5). The prosecution thus alleged that the applicant and the co-accused were the members of a drug cartel led by Farhan

Shaikh (accused No.5), who had obtained contraband article from Javed Shaikh who was yet to be arrested.

6. Mr. Satre, the learned counsel for the applicant, submitted that the commercial quantity of the contraband was not found in possession of the applicant. The co-accused Saleeq Qureshi (accused No. 4) has already been enlarged on bail. The role attributed to the applicant is, by and large, identical. Therefore, the applicant is entitled to the same dispensation.

7. Mr. Agarkar, learned APP, countered the submission on behalf of the applicant. An endeavour was made to draw home the point that though intermediate quantity was found in possession of the applicant like the co-accused, yet, the applicant appeared to be a member of the drug cartel and thus the interdict contained in section 37 of the NDPS Act, 1985 comes into play.

8. Prima facie, it appears that the applicant came to be implicated on the basis of the disclosure made by Mohd. Faruq Sarwaiya (accused No.1). There appears compliance of the provisions contained in section 50 of the Act. It also appears that the learned Magistrate has conducted an inventory and issued a certificate under section 52A(3) of the NDPS Act, 1985.

9. Since an intermediate quantity of the contraband has allegedly been recovered from the possession of the applicant, the

aspect of applicability of the provisions contained in section 29 of the NDPS Act, 1985 may warrant consideration. The prosecution alleges that the applicant is a member of the drug cartel led by Farhan Shaikh (accused No. 5).

10. This Court released Saleeq Qureshi (accused No. 4) on bail as it was alleged that the said accused found in the company of Farhan Shaikh (accused No. 5) when they were apprehended together with intermediate quantity of the contraband and the Court was of the view that, whether the applicant was also privy to the crime appeared debatable. In the case at hand, the material against applicant primarily appears to be the disclosure made by accused No. 1. Jashim Shaikh (accused No. 3) was allegedly apprehended when he came to deliver the contraband to the applicant. In these circumstances, whether the applicant can be roped in by invoking provisions contained in section 29 of the NDPS Act, 1985 appears to be debatable.

11. There does not appear to be much qualitative difference between the role attributed to the applicant and Saleeq Qureshi (accused No. 4), who has been released on bail. The claim for parity is thus sustainable.

12. Investigation is complete. The applicant has been in custody since 3rd August, 2023. Further detention of the applicant does not

seem warranted.

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

Hence, the following order :

ORDER

- (i) The Application stands allowed.
- (ii) The Applicant - Mohammed Hanif Habib Sarvaiya 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 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.)