



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

**BAIL APPLICATION NO. 2306 OF 2023**

|                              |               |
|------------------------------|---------------|
| Md. Dilshad MD. Ayyub Shaikh | ...Applicant  |
| <b>Versus</b>                |               |
| The State of Maharashtra     | ...Respondent |

Mr. Tapan Thatte with Mr. Zahir Mulla i/b Mohammad S. Mulla, for Applicant.

Mr. S. R. Aagarkar, APP for State/Respondent.

Mr. Padvi, API, Pantnagar Police Station, Present.

**CORAM:- N. J. JAMADAR, J.**

**DATED:- 30<sup>th</sup> JANUARY, 2024.**

**PC:-**

- 1) Heard the learned Counsel for the applicant and the learned APP for the State.
- 2) The applicant, who is arraigned in Special Case No. 847 of 2021 arising out of CR No. 4 of 2021 registered with Sakinaka police station, for the offences punishable under Sections 20 (b) (ii) (c) and 29 of Narcotic Drugs and Psychotropic Substances

Act, 1985 ("the Act, 1985") has preferred this application to enlarge him on bail.

3) On the night intervening 13th January, 2021 and 14th January, 2021, while the first information was on patrolling duty at Sangharsh Nagar, a secret informant was received that in Room No. 103, first floor, Shree Samartha Building, Sangharsh Nagar, SRA, Chandiwali, Mumbai, Ganja was stored. A raid was conducted at the said premises. Ashok Manik Mhatre - Accused No. 1 fled away after noticing the police party. In the search at Room No. 103, 10 gunny bags were found stored. Those gunny bags contained 151 packets containing flowering and fruiting tops of Cannabis plant (Ganja). The contraband articles weighed 345 KG, and 525 Grams. The contraband articles were seized and samples were collected.

4) The police party viewed the images in the CCTV captured by the CCTV camera installed at the adjacent building. It was revealed immediately before the raid an auto rickshaw had come in front of the building. Accused No. 1 and his associates had unloaded the gunny bags from the said auto rickshaw and stored them in the said room No. 103.

5) It transpired that the applicant was the auto-rickshaw driver and had also helped in the unloading of the gunny bags

containing contraband articles and storing it in room No. 103. The transcript of the conversation between the co-accused also revealed that the applicant was a privy to the conspiracy. The applicant came to be arrested on 18th January, 2021. Post completion of investigation, charge-sheet came to be lodged against the applicant and the co-accused, with two unknown persons shown as absconding.

6) Mr. Thatte, the learned Counsel for the applicant, submitted that the applicant has been roped in on the basis of suspicion. No contraband article was found in the possession of the applicant. On the basis of the images in the CCTV footages which, at best, indicate that the applicant had driven the rickshaw laden with gunny bags to the building, in which the contraband articles were allegedly found, an inference of conscious possession of the contraband articles cannot be drawn. The applicant had dropped the persons and goods at the said place in the course of his avocation as a rickshaw driver. The mere fact that the applicant had assisted the persons whom the goods belonged to, in unloading the goods from the auto rickshaw by itself does not make the applicant a privy to the alleged offences, urged Mr. Thatte.

7) Mr. Aagarkar, the learned APP for the State, stoutly resisted the prayer for bail. Mr. Aagarkar would urge that the fact that the applicant had transported the contraband articles in the dead of night itself militates against the innocence of the applicant. Moreover, the quantity of the contraband articles allegedly transported and the fact that the applicant was seen assisting the co-accused in not only unloading the contraband but also taking it to the place of accused No. 1, betrays a conscious possession on the part of the applicant. Thirdly, Mr. Aagarkar submitted that the transcript of the conversation between accused No. 1- Ashok and accused No. 3- Aabid Kureshi indicates that the applicant was very much a privy to the conspiracy.

8) I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it. The applicant is sought to be roped in on the basis of the images captured by CCTV. Prosecution alleges on the night of occurrence before the raid was conducted, the contraband articles were brought in front of the building of accused No. 1 in an auto rickshaw, twice, and they were unloaded. The applicant is alleged to be the person, who drove the auto rickshaw.

9) Evidently, the question as to whether the applicant was in conscious possession of the contraband articles in the sense that the applicant knew that the commodity transported in the auto-rickshaw driven by him was Ganja would warrant adjudication at the trial. Prima facie, the circumstances, which are pressed into service against the applicant are, the time of transportation and delivery, the act of the applicant assisting the co-accused in unloading the goods from the auto-rickshaw and the reference in the transcript of the conversation between the accused Nos. 1 and 3.

10) On a careful consideration of the material on record, the aforesaid circumstances of transportation of goods at night and assisting the co-accused in unloading the goods, by themselves, do not appear to have a strong incriminating tendency. It is not uncommon that goods are transported at night. The act of assisting the co-accused in unloading the goods is equally compatible with the innocence of the applicant. The transcript of the conversation between the accused Nos. 1 and 3 indeed refers to contraband articles being laden in auto rickshaw when the police conducted the raid. However, the applicant has not been named in the said conversation.

11) In a situation of this nature where the applicant is sought to be roped in on the basis of the images in the CCTV footage, without there being prima facie any other material to indicate that the applicant was a confederate in the conspiracy, a prima facie case can be said to be made out in favour of the applicant, who is a driver of a public carrier. The Court is not informed that there are antecedents of the applicant which suggest that the applicant had been indulging in such acts. Thus, the rigours contained in Section 37 of the NDPS Act, 1985 may not come into play.

12) In any event, the applicant has been in custody since more than three years. Having regard to the large pendency of cases, it is unlikely that the trial can be concluded within a reasonable period. Prolonged period of incarceration as an under-trial prisoner infringes the right to speedy trial, which is a facet of the fundamental right guaranteed under Article 21 of the Constitution of India.

13) A profitable reference in this context can be made to a recent order of the Supreme Court in the case of **Rabi Prakash Vs. The State of Odisha in Special Leave to Appeal (Crl.) No. 4169 of 2023**. The Supreme Court observed as under:-

“ The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act. Reliance is also placed on **Nitish Adhikary @ Bapan Vs. The State of West Bengal (Special Leave to Appeal (Crl.) No. 5769 of 2022)**, **Gopal Krishna Patra @ Gopalrusma Vs. Union of India (Criminal Appeal No. 1169 of 2022)** decided on 05/08/2022, and **Sharifulislam @ Sarif Vs. The State of West Bengal (Special Leave to Appeal (Crl.) 4173 of 2022)** decided on 04/08/2022. ”

14) For the foregoing reasons, I am inclined to exercise the discretion in favour of the applicant.

15) Hence, the following order:

**: O R D E R :**

(i) The application stands allowed.

(ii) The applicant Md. Dilshad MD. Ayyub Shaikh be released on bail in Special Case No. 847 of 2021 arising out of CR No. 4 of 2021 registered with Sakinaka police station, for the offences punishable under Sections 20 (b) (ii) (c) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985, on furnishing a P.R. Bond in the sum of Rs.1,00,000/- with one or two sureties in the like amount, to the satisfaction of the learned Sessions Judge.

(iii) The applicant shall mark his presence at Sakinaka Police Station on the first Monday of every month between 10.00 am to 12.00 noon for a period of two years or till conclusion of trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(v) The applicant shall not indulge in the identical activity for which he has been arraigned in this case.

(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 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 observations made hereinabove.

**[N. J. JAMADAR, J.]**