

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

BAIL APPLICATION NO. 2560 OF 2023

Sachin Sunil Pathari ...Applicant

Versus

The State of Maharashtra ...Respondent

Ms. Zehra Charania i/b Ayaz Khan, for Applicant.

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

Mr. D. D. Marne, API, Nizampura Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 30th 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 CR No. 293 of 2022, registered with Nizampura Police Station, for the offences punishable under Sections 353, 328, 273 and 276 read with Section 34 of Indian Penal Code, 1860, Section 22 read with section 8 (c) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 18 (A), 18 (a) (VI), 18 (C), 27 (b) (ii), 27 (d) of Drugs and Cosmetics Act, Section 4 read with Section 25 of Arms Act and Section 37 (1) read with Section 135

of Maharashtra Police Act, 1951, has preferred this application to enlarge him on bail.

3) On 14th April, 2022, while the police were patrolling, two persons were found moving suspiciously. When they were accosted, they tried to flee away while making threatening gestures of stabbing members of the police party. Accused Sadaf @ Chapad Abdul Rehman Ansari and Shabir Abdul Rehman Ansari were apprehended. In the personal search, 108 bottles of Rx Chlopheniramine Maleate and Codine Phosphate Syrup "Maxcoff 100 ml each and 97 bottles of Rx Chlopheniramine Maleate and Codine Phosphate Syrup "RCX-Care" 100 ml each were found in the bags which the co-accused were carrying. The contraband articles were seized and samples were collected.

4) During the course of investigation, co-accused Abdul Kadir Fakruddin Sayyed made a disclosure statement on 19th December, 2022. The said accused disclosed that he had mixed the contraband articles supplied by the applicant with the contraband articles handed over to Sadaf @ Chapad Abdul Rehaman Ansari and Shabir Abdul Rehman Ansari. On the basis of the said statement, the applicant came to be arrested.

5) The learned Counsel for the applicant submitted that the applicant has been arrested solely on the basis of the statement

of the co-accused. There is no material to connect the applicant with the alleged offences nor there is any circumstance which would indicate that the applicant entered into conspiracy with the co-accused, punishable under Section 29 of the NDPS Act, 1985.

6) The learned APP resisted the prayer for bail. It was submitted that apart from the statement of the co-accused, according to his instructions, CDR establish the nexus between the applicant and the co-accused, who were found in possession of the contraband articles.

7) Prima facie, it appears that the applicant has been roped in on the basis of the statement of co-accused Kadir Fakruddin Sayyed. The Court is informed that there are no antecedents of the applicant.

8) I have carefully perused the memorandum of disclosure statement dated 19th December, 2022. In the memorandum of disclosure statement co-accused has not named the applicant. Nor there is a reference to the fact that the applicant had supplied the contraband articles which were allegedly supplied to the other co-accused. In the later part of the seizure panchanama, a statement is attributed to the co-accused that he had mixed contraband articles supplied by the applicant.

Prima facie, the statement made by the co-accused does not distinctly relate to the discovery thereby effected so as to become admissible under Section 27 of the Indian Evidence Act. Apart from the said statement, there is no other material to connect the applicant with the alleged offences.

9) In the circumstances of the case, since there is no prima facie material to connect the applicant with the alleged offences, the bar under Section 87 of the NDPS Act, 1985 does not come into play.

10) I am, therefore, persuaded to exercise the discretion in favour of the applicant.

11) Hence, the following order:

: O R D E R :

(i) The application stands allowed.

(ii) The applicant Sachin Sunil Pathari be released on bail in CR No. 293 of 2022, registered with Nizampura Police Station, for the offences punishable under Sections 353, 328, 273 and 276 read with Section 34 of Indian Penal Code, 1860, Section 22 read with section 8 (c) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 18 (A), 18 (a) (VI), 18 (C), 27 (b)(ii), 27 (d) of Drugs and Cosmetics Act, Section 4

read with Section 25 of Arms Act and Section 37 (1) read with Section 135 of Maharashtra Police Act, 1951, on furnishing a P.R. Bond in the sum of Rs.30,000/- 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 the Nizampura Police Station on the alternate 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) 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.]