

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2618 OF 2023

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SUBHASH
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VISHAL SUBHASH
PAREKAR
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Mohammed Zahid Ahmed Khan

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Mohd. Ahmed, for the Applicant.

Mrs. Geeta Mulekar, APP, for the Respondent/State.

Mr. Sunil Jadhav, PSI, Tilak Nagar police station.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 21, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant, who is arraigned in C.R. No.88 of 2020 registered with Tilak Nagar police station for the offences punishable under section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act, 1985), seeks to be enlarged on bail.
3. The indictment against the applicant is that on 31st March, 2020 while the Tilak Nagar police were conducting a check at Ghatkopar-Mankhurd Link Road, Chedda Nagar Junction, the applicant came in a car bearing Number MH-03-AR-4807. The applicant and the driver of the car gave evasive replies. Police party entertained suspicion. Two panchas were called. In the presence of panch witnesses, search was conducted. A transparent plastic pouch was found concealed in the pocket of the trouser of the

applicant. It contained a white substance. It turned out to be Mephedrone (MD) weighing 58 gms. The contraband article was seized and samples were collected. The applicant came to be arrested.

4. Mr. Mohd Ahmed, the learned counsel for the applicant, submitted that there is a total non-compliance of the provisions contained in section 50 of the NDPS Act. The applicant was not apprised of his right to be searched before the gazetted officer or Magistrate. It was further submitted that the samples were collected at the time of seizure in breach of the mandate contained in section 52A of the NDPS Act, 1985. Moreover, the applicant has been in custody since 31st March, 2020 and the charge has yet not been framed.

5. As against this, Mrs. Mulekar, the learned APP submitted that the inventory under section 52A of the NDPS Act, 1985 was conducted on 20th April, 2020. The learned APP, however, fairly submitted that from the perusal of the FIR and seizure panchanama, it becomes evident that the provisions contained in section 50 have not been complied with.

6. I have perused the FIR and the seizure panchanama. Evidently, there is a total non-compliance of the provisions contained in section 50 of the NDPS Act. There is no reference to

the fact that the applicant was apprised of his right to be searched before a gazetted officer or Magistrate. The contraband was allegedly recovered from the person of the applicant. The entire search thus stands vitiated. It would be suffice to make a reference to the Constitution Bench judgment of the Supreme Court in the case of *Vijaysinh Chandubha Jadeja vs. State of Gujarat*¹, wherein the Supreme Court emphasised the requirement of scrupulous compliance with the provisions of Section 50 of the NDPS Act, 1984.

7. It also appears that the samples were collected at the time of seizure and those samples were sent for analysis to FSL. The C.A. report is apparently based on the samples, which were collected by the investigating agency at the time of seizure. The subsequent inventory conducted on 20th April, 2020, is of no avail to the prosecution.

8. In view of the recent pronouncement of the Supreme Court in the case of **Mohammed Khalid and Another vs. The State of Telangana**², such C.A report loses evidenciary value. The Supreme Court observed in emphatic terms that since no proceedings under Section 52A of the NDPS Act, 1985 were undertaken by the Investigating Officer for preparing an inventory and obtaining samples in presence of the jurisdictional Magistrate, the FSL report

¹ 2011(1) SCC 609.

²

is nothing but a waste paper and cannot be read in evidence.

9. The Court is not informed about any antecedents of the applicant. Therefore, the interdict contained in section 37(1)(b)(ii) of the NDPS Act, 1985 does not operate. Moreover, the applicant has been in custody since 31st March, 2020. The charge has yet not been framed. On the count of long period of incarceration also, the applicant deserves to be enlarged on bail.

10. I am, therefore, inclined to release the applicant on bail.

Hence, the following order.

ORDER

1] The application stands allowed.

2] The applicant Mohammed Zahid Ahmed Khan be released on bail in C.R. No.88 of 2020 registered with Tilak Nagar police station, on furnishing a P.R. Bond of Rs. 1,00,000/- with one or more sureties in the like amount.

3] The applicant shall mark his presence at Tilak Nagar police station on the first Monday of every month between 11 am to 1 pm till conclusion of the trial.

4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of

the case.

5] 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.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] 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.)