



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2665 OF 2023**

Sunil Kailash Pandit

... Applicant

versus

The State of Maharashtra

... Respondent

Mr. Kamlesh Satre i/by Mr. Vikas A. Chavan, for Applicant.

Mrs. G.P. Mulekar, APP for State

Mr. Ambavane, API ANC MBVV present.

CORAM: N.J.JAMADAR, J.

DATE : 19 JANUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant who is arraigned in C.R.No.320 of 2022 registered with Mira Road Police Station for the offences punishable under Sections 20(b)(ii)(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 has preferred this application to enlarge him on bail.
3. Pursuant to an intimation, Mira Road Police conducted a surveillance and co-accused Shahnaz Shaikh was found in possession of contraband article - charas weighing 3 kg. 65 gms, a commercial quantity. House search of accused No.1 was conducted on 6 August 2022. A railway ticket was found which indicated that the accused No.1 had travelled from Gorakhpur Junction to Bandra Terminus. Upon being enquired, accused No.1 allegedly disclosed that at Gopalganj, the applicant had delivered a plastic bag to the accused No.1 which contained black colour substance

and asked her to call him after the substance was sold. The applicant came to be arrested on 23 October 2022 from his native place in Bihar. Nothing objectionable was found in the house of the applicant or personal search.

4. Learned Counsel for the applicant submitted that the applicant has been roped in only on the basis of the statement of the co-accused. Nothing incriminating has been found in the possession of the applicant. Apart from the statement of the applicant, the prosecution is relying on CDR which purportedly shows that the applicant had conversations with the accused No.1. However, in the absence of the details of the conversation between the applicant and the co-accused, the said CDR does not carry any incriminating tendency, urged learned Counsel for the applicant.

5. In opposition to this, learned APP submitted that the applicant has been specifically named by the co-accused as the person who had delivered the contraband articles and asked her to sell the same. Since the CDR revealed that there were number of calls by and between applicant and co-accused, the applicant is equally complicit.

6. I am afraid to accede to the submission on behalf of the State. Prima facie, there is no material to connect the applicant with the alleged offences. It is pertinent to note that when the accused No.1 was allegedly apprehended along with the contraband articles, it does not appear that the accused No.1 had named the applicant as the person who had supplied the subject contraband articles. Implication

of the applicant thus does not have an element of spontaneity. Even otherwise, the statement of the co-accused is not a substantive piece of evidence. The submission of the learned Counsel for the applicant that the CDR by itself without anything more is not sufficient to incriminate the applicant, carries substance.

7. The situation which thus obtains is that there is prima facie no material to connect the applicant with the crime. Therefore, the interdict contained in Section 37 of the Act, does not come into play. The court is not informed that there are antecedents of the applicant having indulged in the offences punishable under NDPS Act, 1985. Thus, there is no likelihood of applicant indulging in those offences, if released on bail.

8. The applicant came to be arrested on 24 October 2022. It is unlikely that the trial can be concluded within a reasonable time. I am, therefore, inclined to exercise the discretion in favour of the applicant.

9. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Sunil Kailash Pandit be released on bail in C.R.No.320 of 2022 registered with Mira Road Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence before Mira Road Police Station on first Monday of every month in between 11 am to 1 pm for a period of one year and thereafter, on the first monday of every trimester till the conclusion of the trial.

(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.)