

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

CRIMINAL BAIL APPLICATION NO. 3002 OF 2022

Faiyyaz Mohammad Hussain .. Applicant
Shaikh @ Takkar

Vs.
The State of Maharashtra .. Respondent

.....
Mr. Shreerat Kamath a/w Ms. Puja P. Yadav for the applicant
Mr. A.A. Palkar, APP for the respondent – State
Mr. Santosh Salunkhe, API, ANC Worli present
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CORAM : PRITHVIRAJ K. CHAVAN, J.

**CLOSED ON : 16th APRIL, 2024
PRONOUNCED ON : 18th APRIL, 2024**

P.C.

1. The applicant prays for his release on bail, who is behind the bars in connection with C.R. No. 100 of 2021 for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (For short “NDPS Act”) registered with ANC, Worli Unit, Mumbai as the applicant was allegedly found in possession of 65 grams of Mephedrone (MD).

2. Brief facts are as follows.

3. The sleuths of Anti Narcotic Cell, Worli unit were on

patrolling duty on 04.12.2021. When they reached near Grant Road around 16 hours, they noticed a person standing at Grant Road who was waiting for someone with a black plastic bag in his hand. No sooner did he notice the police, he tried to escape, however he was nabbed and inquired. Two panch witnesses were summoned. The applicant was informed about his right to be searched in the presence of a Gazetted Officer or Magistrate. A written notice has been served upon him. The applicant could only understand Hindi but was unable to write. The contents of the notice were read over to him. Upon his refusal to accompany with the team to the Magistrate, when he was searched in the presence of panchas, a transparent plastic bag closed with staple containing white powder weighing 56 grams was found in a black plastic. The applicant, on being asked, informed that it was Mephedrone which was used for intoxication and the weighing scale was for the purpose of weighing the contraband. A panchanama was drawn. Statements were recorded. Mephedrone was sent for chemical analysis at Forensic Science Laboratory, Kalina. After the investigation, a charge-sheet has been filed.

4. Having failed in his first attempt to secure bail in the trial

Court, the applicant approached this Court.

5. I heard Mr. Kamath, learned Counsel for the applicant and the learned APP. Perused an affidavit tendered by the learned APP.

6. At the outset, learned Counsel for the applicant would argue that this is a case in which the Investigating Agency has failed to comply with the mandate of Sections 50 and 52A of the NDPS Act since the contraband was forwarded 2 days after its seizure. The accused no.2 in this case was arrested on 13.12.2021. A procedure under Section 52A of the NDPS Act was conducted *qua* the accused no.2 but not *qua* the applicant. Learned Counsel would argue that though the team was equipped with the kit, they did not test the contraband on the spot as is evident from the panchanama. He, therefore, prayed for release of the applicant on bail.

7. *Per contra*, learned APP would strongly object the release of the applicant mainly on the premise that there was due compliance of Section 52A though it was after 2 years. It cannot be said that the mandate of Section 52A has not been complied with. The learned APP took me through the panchanama. It is submitted that since the contraband was found in the bag, there was no reason for

conducting personal search of the applicant.

8. It reveals from the record that during the course of investigation, the name of the accused no.2 cropped up for the first time on 13.12.2021 who was arrested on 14.12.2021, from whose possession 12 grams of contraband was recovered. Admittedly, there was considerable delay of about a year in drawing the samples as per Section 52A of the NDPS Act before the Metropolitan Magistrate. It appears that the samples were forwarded to the Forensic Science Laboratory, Kalina on 26.05.2022. The inventory process was completed on 21.12.2022. The very object of Section 52A of the NDPS Act has been frustrated.

9. The inventory further reveals that total weight of the contraband along with plastic bag was 56 grams. However, the FSL's report dated 26.05.2022 does not indicate the weight of the contraband. The result of the analysis is positive for Mephedrone. The proceeding under Section 52A of the NDPS Act was conducted *qua* accused no.2 but not *qua* the applicant. Interestingly, when the contrabands were forwarded to the *Malkhana* of the police station, there was no mention of the weight of the contraband.

10. The learned Counsel has placed reliance on a recent judgment of the Supreme Court in case of **Mohammed Khalid & Anr. Vs. State of Telangana (Criminal Appeal No(s.) 1610 of 2023)**. Para 22 of the said judgment reads thus :-

“22. Admittedly, no proceedings under Section 52A of the NDPS Act were undertaken by the Investigating Officer PW-5 for preparing an inventory and obtaining samples in presence of the jurisdictional Magistrate. In this view of the matter, the FSL report (Exhibit P-11) is nothing but a waste paper and cannot be read in evidence. The accused A-3 and A-4 were not arrested at the spot. The offence under Section 20(b)(ii)(c) deals with production, manufacture, possession, sale, purchase, transport, import or export of cannabis. It is not the case of the prosecution that the accused A-3 and A-4 were found in possession of ganja. The highest case of the prosecution which too is not substantiated by any admissible or tangible evidence is that these two accused had conspired sale / purchase of ganja with A-1 and A-2. The entire case of the prosecution as against these two accused is based on the interrogation notes of A-1 and A-2.”

11. It also appears from the record that the contraband allegedly recovered from the accused no.2 is Methamphetamine and not Mephedrone as per the CA report. Even, there is no material to indicate that there was a conspiracy between both the applicants in view of Section 29 of the NDPS Act.

12. Having given an opportunity to the learned APP, I am

convinced that there are reasonable grounds for believing that the applicant is not guilty of such offence and that he is not likely to commit an offence while on bail for the reasons stated hereinabove, more particularly, in light of the fact that there was absence of due compliance of Section 52A of the NDPS Act. The samples of the contraband and the CA report are not consistent and also, ever since his arrest on 04.12.2021, the trial has not yet commenced and there is no likelihood of getting it over within a reasonable time. I am, therefore, inclined to release the applicant on bail.

13. Hence, I pass the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant be released on executing 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 Special Court in NDPS Special Case No.577 of 2022 in connection with C.R. No.100 of 2021 registered with ANC, Worli Unit, Mumbai for the offences punishable under Sections 8(c), 22(c) and 29 of the NDPS Act.
- (c) The applicant shall report the office of the ANC, Worli

Unit, Mumbai on first Monday of every month between 10.00 a.m. to 1.00 p.m. till charge is framed.

(d) After framing the charge, the applicant shall attend each date in the trial Court scrupulously.

(e) The applicant shall not tamper with the evidence or attempt to influence or contact any of the witnesses or persons concerned with this case.

(f) The applicant shall furnish his residential address and contact details forthwith to the respondent and the Special Court. The applicant shall inform in case of any change in his contact details or residential address to the respondent as well as the Special Court.

(g) The applicant shall surrender his passport, if any, to the Investigating Officer immediately.

(h) In case of two consecutive defaults either in attending the respondent or the trial Court or in case of breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of his bail.

14. The application stand disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J.)