IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2807 OF 2023

Fazale Haq Abdul Wajid Siddiqui ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Taraq Sayyed i/b A. Achari, for Applicant.

Mrs. G. P. Mulekar, APP for State/Respondent.

CORAM:- N. J. JAMADAR, J.

DATED:- 21st FEBRUARY, 2024.

ORDER:-

1) Heard the learned Counsel for the applicant and the learned APP for the State.

2) The applicant, who is arraigned in connection with CR No. 161 of 2022 registered with Anti Narcotic Cell, Mumbai, for the offences punishable under Sections 22 (c) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 ("the Act, 1985"), Sections 465, 467, 468, 471, 419 and 420 of Indian Penal Code, 1860 ("the Penal Code, 1860") and Section 12 of Passport Act, 1967, along with Mohammad Shahrukh Mohammad Shafi Shaikh (accused No. 1), has preferred this application to enlarge him on bail.

3) In a nutshell, the prosecution case is that on 3rd August, 2022 while the team of Anti Narcotic Cell Police Mumbai was on patrolling duty, accused No. 1- Mohammad Shahrukh Mohammad Shaikh was found moving in a suspicious manner. Accused No. 1 was accosted. He was apprised of his right to be searched in the presence of Gazetted Officer or Magistrate. In the personal search of accused No. 1, a plastic pouch containing gray substance was found. It appeared to be Mephedrone (MD). The said substance weighed 995 grams. Accused No. 1 was apprehended.

4) During the course of interrogation, accused No. 1 disclosed that he had procured the said contraband from Shoyeb, Shera, and Salem through Fazale Haq Abdul Wajid Siddiqui (the applicant) and Vicky. The applicant was arrested. During the course of investigation, it transpired that the applicant had procured the contraband article in pursuance of a conspiracy with the absconding accused – Shoyeb Khan. The applicant had collected money sent through Angadia Service Providers. The call data records also indicate that the applicant was in touch with the co-accused.

5) I have heard Mr. Taraq Sayyed, the learned Counsel for the applicant, and Mrs. Mulekar, the learned APP for the State at some length.

6) Mr. Sayyed submitted that there is no material to connect the applicant with the alleged offences under the NDPS Act, 1985. Nothing was recovered at the instance of the applicant. No nexus between the amount of Rs.1,25,000/-, which was allegedly collected by the applicant from Angadia Service Providers and the contraband article recovered from the possession of the accused No. 1, could be established. There are no antecedents of the applicant. Hence the applicant deserves to be enlarged on bail.

7) Mrs. Mulekar, the learned APP for the State, controverted the submissions on behalf of the applicant. Referring to the statements of Angadia Service Provider, which indicate that during the period July, 2022 to August, 2022, the applicant had collected more than Rs.25,00,000/- in eight tranches, it was urged that the applicant is a privy to drug trafficking. Emphasis was laid on the fact that the chits maintained by the Angadia Service Provider indicate that amounts were collected twice by the applicant. Mrs. Mulekar further submits that there is material to show that the applicant had delivered the money to witness Shabista Shaikh at the instance of the absconding accused- Shoyeb. Relying upon the alleged telephonic conversation between the applicant and the co-accused, Mrs. Mulekar would urge that there is adequate material to indicate that the applicant was a confederate in the conspiracy punishable under Section 29 of the NDPS Act, 1985.

8) I have carefully perused the report under Section 173 of the Code, 1973 and the documents annexed with it. I have also given anxious consideration to the rival submissions. Evidently, no contraband article was recovered from the possession of the applicant. 995 gram MD was allegedly recovered from the possession of accused No. 1. Prosecution alleges accused No. 1 claimed to have procured the said MD from three persons namely, Shoyeb, Shera, and Salem. The procurement was allegedly facilitated by the applicant and Vicky.

9) The applicant is thus alleged to be a co-conspirator along with the accused No. 1 and absconding accused in the conspiracy of drug trafficking. The circumstance which is predominantly arrayed against the applicant is the collection of money from the Angadia Service Provider. The statements of Angadia Service Provider (page No.242 to 245) indicate that during 2nd July, 2022 to 2nd August, 2022, the applicant had collected a sum of Rs.4,00,000/- and a friend of the applicant had collected a sum of Rs.21,50,000/-, which was sent from Nagpur by a person named Raju. The counterfoils of the receipts (page No. 246 and 247) allegedly indicate the name of the applicant along with his mobile number in token of receipt of the amounts. Those persons have identified the applicant as the person who had collected the cash amount.

10) The prosecution seeks to bank upon the statement of the brother of the applicant which indicates that on 8th August, 2022, the applicant had carried the mobile phone handset of the said witness on the pretext that he had some work with a money transfer agent. There were messages on his mobile phone that money was transferred from his account. After a while the applicant handed over cash amount of Rs.1,25,000/- and the applicant's mobile phone in a switched off mode with instructions to keep the mobile phone in the same state. On 10th August, 2022, the said witness handed over the said mobile phone handset and cash amount of Rs.1,25,000/- to the Investigating Officer. Nexus is also sought to be established by relying upon the statement of one Shabista Shaikh, who stated that the applicant delivered amounts of Rs.2,25,000/- and Rs.2,30,000/- in the month of July and August, 2022, respectively, and made her speak with one Shoyeb, a friend of her husband, who was suffering from serious ailments.

11) Prima facie, I find substance in the submission of Mr. Sayyed that there is no nexus between the amounts which were allegedly paid by the applicant to Shabista Shaikh and the allegations of drug trafficking. Even if the statement of Shabista is taken at par, it prima facie does not appear that there was any connection between the activities of drug trafficking, her husband and the amount paid to her.

12) The fact that the brother of the applicant had produced the mobile phone handset and cash amount of Rs.1,25,000/- also, prima facie, does not seem to have any incriminating tendency. Prima facie, on the own showing of the prosecution, the applicant had collected an amount of Rs.3,00,000/- on 2nd August, 2022 and the applicant had told his brother on 8th August, 2022 that he had some work with a money transfer agent. Secondly, the accused No. 1 was apprehended with the contraband article on 4th August, 2022 itself.

13) In the aforesaid circumstances, the statements of Angadia Services Provider, even if taken at their face value, in themselves, do not appear to be prima facie adequate to establish the nexus between the applicant, the co-accused, and the absconding accused with regard to the contraband article. In the absence of material to establish such a connection, at this stage, the mere fact that the applicant collected cash from Angadia Service Provider may not be sufficient to infer conspiracy punishable under Section 29 of the NDPS Act. That would be a matter of proof at the trial.

14) The alleged call data record, without anything more, in the circumstances of the case, even if considered in conjunction with the collection of cash amount from Angadia Service Provider would be too tenuous a circumstance to connect the applicant with the alleged offence of drug trafficking.

15) Evidently, there are no antecedents. In the circumstances of the case, the Court would be justified in drawing an inference that the accused may not be guilty of the offences punishable under Sections 22 (c) and 29 of the NDPS Act, 1985. In the absence of antecedents, an inference that the applicant may not indulge in identical offences for which he has been arraigned in this case may also become justifiable. Thus the twin test stands satisfied. The applicant has been in custody since 8th August, 2022. Investigation is complete and charge-sheet has been lodged. Further detention of the applicant is thus not warranted.

16) I am, therefore, impelled to exercise discretion in favour of the applicant.

17) Hence, the following order:

: O R D E R :

(i) The application stands allowed.

(ii) The applicant Fazale Haq Abdul Wajid Siddiqui be released on bail in CR No. 161 of 2022 registered with Anti Narcotic Cell, Mumbai, for the offences punishable under Sections 22 (c) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 465, 467, 468, 471, 419 and 420 of Indian Penal Code, 1860 and Section 12 of Passport Act, 1967, 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 trial Court.

(iii) The applicant shall mark his presence at the Anti Narcotic Cell, Mumbai on the first Monday of every month between 10.00 am to 12.00 noon for a period of three 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) 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 the observations made hereinabove.

[N. J. JAMADAR, J.]