

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3067 OF 2023

Nitin Chandrakant Adsule @ PapyaApplicant

vs.

The State of Maharashtra ...Respondent

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Mr. Dilip Mishra, a/w. Ms. Zehra Charania and Ms. Mallika Sharma, i/b.
Mr. Ayaz Khan, for the Applicant.

Mr. Y.M. Nakhwa, APP, for State/Respondent.

Mr. R.V. Londhe, A.N.C., Ghatkopar Crime Branch, Mumbai.

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CORAM : N.J. JAMADAR, J.

DATE : 22nd JANUARY, 2024

P.C. :

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

2. The applicant, who is arraigned in C.R. No.1 of 2023 by the
Anti Narcotic Cell, Ghatkopar Mumbai for the offences punishable
under Sections 22(b), 22(c) and 29(o) of the Narcotic Drugs and
Psychotropic Substances Act, 1985 ('NDPS Act') has preferred this
application to enlarge him on bail.

3. The gravamen of indictment against the applicant is that, while patrolling at Mahim on the night intervening 31st December, 2022 and 1st January, 2023, two persons were found moving suspiciously. Applicant and the co-accused Mallesh Reddy were accosted. They were apprised of their right to be searched in the presence of the Gazetted Officer or Magistrate under Section 50 of the NDPS Act, 1985. In the search of the applicant, 40 grams Mephedrone (MD) was found. In the search of the co-accused Mallesh Reddy, 110 grams MD was found.

4. It further transpired that the applicant and co-accused Mallesh Reddy had procured the said contraband article from a lady - Blessing Amaka Okonkwo, an African National. Co-accused Mallesh had sold 40 grams MD to the applicant.

5. The learned Counsel for the applicant submitted that the contraband article found in possession of the applicant is less than the commercial quantity. Hence, the rigours contained in Section 37 of the NDPS Act do not come into play.

6. The learned APP made an endeavour to urge that the applicant and the co-accused were found together and, thus, offence punishable under Section 29 of the Act, 1985 can be said to have been *prima facie* made out.

7. I have carefully perused the First Information Report and the seizure panchnama. It prima facie appears that the allegation is that the co-accused Mallesh Reddy had procured 150 grams of MD for sale, of which 40 grams was allegedly sold to the applicant. The rest was to be sold to the other customers. Before the contraband article could be sold to them, the applicant and the co-accused were apprehended. In the circumstances, the question as to whether the applicant can be roped in for the offence punishable under Section 29 of the Act of 1985 will be a matter for adjudication under trial.

8. Evidently, the applicant was found in possession of contraband article of less than commercial quantity. Thus, the rigours contained in Section 37 of the NDPS Act do not come into play.

9. The Court is not informed that there is any antecedent of the applicant having been involved in an offence punishable under the NDPS Act, 1985. The applicant is in custody for more than a year. It is unlikely that the trial can be concluded in near future and, therefore, I am inclined to exercise the discretion in favour of the applicant.

Hence, the following order:

: O R D E R :

- (i) The application stands allowed.

- (ii) The applicant – Nitin Chandrakant Adsule @ Papyra be released on bail in C.R. No.1 of 2023, registered with Anti Narcotic Cell, Ghatkopar Mumbai, on furnishing a P. R. Bond of Rs.50,000/- with one or more sureties in the like amount;
- (iii) The applicant shall mark his presence before the concerned police station on the first Monday of every alternate month in between 10.00 am. to 12.00 noon for a period of three years or till conclusion of the trial, whichever is earlier;
- (iv) The applicant shall not indulge in the activity, for which he has been arraigned in this case;
- (v) 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;
- (vi) 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;
- (vii) The applicant shall regularly attend the proceedings before the jurisdictional Court;
- (viii) 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.)