IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3312 OF 2023

Kaynaat Sahil Khan ... Applicant
versus
Crime Branch and Anr. ... Respondents

Mr. Mandar M. Goswami with Mr. Samyak A. Goswami, for Applicant.
Mr. S.R.Aagarkar, APP for State.
PI Nanaware H.M., DCB CID Unit No.6, Chambur Mumbai present.

CORAM: N.J.JAMADAR, J.

DATE : 10 MARCH 2024

P.C.

1. Heard the learned Counsel for the parties.

2. The applicant, who is arraigned in C.R.No.172 of 2023 registered with Navghar Police Station for the offences punishable under Sections 420, 465, 468, 471 of the Indian Penal Code, Sections 22(c), 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, has preferred this application to enlarge her on bail.

3. The gravamen of indictment against the applicant and the co-accused is that on 15 August 2023, specific information was received at Anti-Narcotic Cell, Mumbai that Sahil Ramzan Ali Khan @ Massa (A1), the husband of the applicant, Sarfaraz Shabbirali Khan (A7) and Ali Javad Jafar Mirza (A12) were indulging in

trafficking in drugs in hugh quantity through their associates Shamsuddin, Imran, Mohd. Tausif, Ismail and others and on that day between 11.30 p.m. to 12.00 midnight, they were to arrive in one blue Ertiga Car bearing No.MH-04/KF-1514 and another Creta Car bearing No.MH-04/JZ-2772 to sell mephedrone near Anand Nagar Toll Naka, Mulund, Mumbai. After complying with the pre-requisites under the Act, 1985, police conducted a surveillance.

4. At 12.05 a.m. on 16 August 2023, as informed, blue Ertiga Car bearing No.MH-04/KF-1514, came on the south flank of Thane Mumbai Road. The car was intercepted. Co-accused Sahil Ramzan Ali, Mohammad Ajmal Kasam Shaikh, Shamsuddin Shah, Imran Pathan, Mohammad Tausif Shaukat Ali and Mohammad Ismail Salim alighted from the said car. They were accosted. Each of them was apprised of their right to be searched before the Gazetted Officer or Magistrate. As they declined, personal search was conducted in the presence of the panch witnesses. In the search of Sahil Khan (A1), 62 gms of MD was recovered. From the possession of Mohd. Ajmal Kasam Shaikh (A2) 54 gms of MD, Shamshuddin Shah (A3) 31 gms of charas, Imran Pathan (A4) 20 gms of MD, Mohd. Tausif Shaukat Ali (A5) 14 gms of MD, and from Mohd. Ismail (A6) 18 gms MD was recovered.

5. Creta Car bearing No. MH-04/JZ-2772 was also intercepted. Sarfaraz Khan, Priyanka Karkour, Mohd. Shakil Khan and Bambaiya Hussain alighted from the said car. In the search of Sarfaraz (A7), 58 gms MD and Priyanka(A9) 14 gms MD was

recovered. Contraband articles were seized.

6. Investigation revealed that the accused No.1 was running a drug cartel. The accused made disclosure statements which revealed that the applicant, who is the wife of accused No.1, was also involved in the supply and sale of the drugs. The applicant and co-accused were accepting the money in cash and also by way of credit into their bank accounts. The applicant and her husband had acquired a number of immovable properties, though they had no known source of income and also had huge balance in their bank accounts, and gold and silver ornaments. Those properties were acquired out of the proceeds of illicit drug trade.

7. The applicant came to be arrested on 23 August 2023. The applicant also made a discovery under Section 27 of the Evidence Act and pointed out the numbers of the persons who were privy to the illegal drug trade as the partners in the trade, suppliers and purchasers. Post completion of investigation, charagesheet has been lodged.

8. It is, inter alia, alleged that while her husband was in prison in connection with another case, the applicant had been managing the illegal drug trade and they have acquired huge properties out of the proceeds of the illegal drug trade. Two immovable properties were shown to be in the name of the applicant. She had gold and silver jewellery running into lakhs of rupees. In the bank accounts maintained by the applicant with Yes Bank and HDFC Bank, sums of Rs.2,34,743.33

and Rs.13,572.10 respectively, were shown to the credit of those accounts. In the personal locker of the applicant with Yes Bank, 602.990 gms of gold and silver jewellery valued at Rs.20,55,959/- was found. All these properties were seized. It is, thus, alleged that the applicant is a privy to the illicit drug trade.

9. Mr. Goswami, learned Counsel for the Applicant, submitted that the applicant had been implicated only for being the wife of accused No.1. No contraband article was found in the possession of the applicant. It is only on the basis of the statements of the co-accused, the applicant has been arraigned as a confederate in the conspiracy punishable under Section 29 of the Act. Mr. Goswami made an endeavour to draw home the point that the disclosure statements made by co-accused do not constitute legal evidence qua the non-maker co-accused and on the basis of such statements, the applicant cannot be deprived of her personal liberty.

10. It was submitted that as there is no material to invoke the provisions contained in Section 29 of the Act, the interdict contained in Section 37 of the Act does not come into play. To lend support to this submission, Mr. Goswami placed reliance on the judgment of the Supreme Court in the case of **Amarsingh Ramjibhai Barot V/s. State of Gujarat**[1], the orders of the Supreme Court in the cases of **Shreyansh Jhabak V/s. The State of Chhattisgarh**[2] and **Seesh Singh @ Mor V/s. State of Punjab**[3].

1 (2005) 7 SCC 550
2 2021 SCC Online SC 3589
3 Cri. Appeal No.822 of 2020 dt. 2 December 2020.

11. In opposition to this, Mr. Aagarkar, learned APP strongly resisted the prayer for bail. It was submitted that the fact that no contraband article was found in possession of the applicant is not of decisive significance. There is overwhelming material on record to indicate that the applicant was very much involved in the illicit drug trade. Laying emphasis on the fact that despite their being no known source of income, the applicant has acquired immovable properties worth lakhs of rupees and there were huge transactions in the bank accounts maintained by the applicant as well as seizable amounts of gold and silver jewellery, learned APP submitted that the financial transactions unmistakably indicate that those properties have been acquired out of the proceeds of illicit drug trade. No explanation is forthcoming from the applicant regarding the source of the acquisition of those properties.

12. Learned APP further submitted that cumulatively commercial quantity of contraband was recovered from the possession of the co-accused who were all travelling together. Therefore, the bar contained in Section 37(1)(b)(ii) applies with full force and vigour. Having regard to the antecedents of the husband of the applicant and the material which makes out a very strong prima facie case against the applicant, there is an imminent danger that the applicant will indulge in the identical offences under the NDPS Act, if released on bail. Thus, the applicant does not deserve to be enlarged on bail.

13. I have given anxious consideration to the rival submissions. Sahil Khan (A1), the husband of the applicant, is alleged to be the kingpin of the drug cartel. It is the prosecution case that while A1 was incarcerated the applicant was indulging in drug trafficking and has amassed huge proceeds out of illicit trafficking in drugs.

14. The principal submission of Mr. Mandar Goswami that since the allegation that the applicant is a member of the drug trafficking cartel and monies were credited to and transferred from the accounts of the applicant draws support from the statements of the co-accused, which are not admissible in the evidence, there is no material to connect the applicant with the alleged drug trafficking, in the peculiar facts of the case, cannot be accepted unreservedly. The decisions in the cases of **Shreyansh Jhabak Vs. The State of Chhattisgarh, (Supra)**, and **Seesh Singh @ Mor Vs. State of Punjab (supra),** on which reliance was placed by Mr. Goswami, wherein the Supreme Court granted bail as the appellants therein were sought to be implicated on the basis of the statement of the co-accused, do not govern the facts of the case at hand.

15. Undoubtedly, a statement of an accused is not legal evidence against the co-accused. Yet, the correct approach would be to assess as to whether *de hors* the statements of the co-accused, there is independent material to show the complicity of the applicant. The prosecution seeks to implicate the applicant primarily on the basis of the documents and material to show that the applicant has amassed huge wealth

allegedly out of the illegal trafficking in drugs. The following properties stand in the name of the applicant.

LIST OF IMMOVABLE PROPERTIES

Sr. No.	Flat/shop Detail	Ownership	Value of Property in Rs.	Year of Purchase by Accused
1	Row house No. R-1, Ground floor, Star Complex, Plot No. 437/438, Sector-1, Ghansoli, New Mumbai Maharashtra, 400701.	Sahil Ramjan Ali Khan's wife Kaynat Sahil Khan	60,00,000/-	2021
2	Shri Siddhivinayak Chawl No. 3, Room No. 4, Kharegaon, Kalawa, Tal. And Dist, Thane, Maharashtra 400 605	Sahil Ramjan Ali Khan's wife Kaynat Sahil Khan	12,00,000/-	2022

LIST OF MOVABLE PROPERTIES

Sr. No.	Description of Movable Property	Owner	Value in Rs.	Seizure Date
1	51.840 grams of Gold Jewelry	Sahil Ramjan Ali Khan's wife Kaynat Sahil Khan	1,95,410/-	24/08/2023

(i)

Sr. No.	Description of Movable Property	Owner	Value in Rs.	Seizure Date
1	602.990 grams of Gold and Silver Jewelry	Personal locker number 88 of the accused named Kainaat Sahil Khan in Yes Bank Ghatkopar branch, Mumbai City.	20,55,959/-	28/11/2023

(ii)

Sr. No.	Bank Account Details	Holder Name	Amount Seized (In Rupees)
02	Yes bank account No.021352400000075. (Yes bank Branch-Ghatkopar Mumbai)	Accused Kaynat Sahil Khan	2,34,743.33/-
03	HDFC Bank account No. 50100309009247. (HDFC bank Branch – shop No. 14, Ground Floor, Coaral Crest, Plot No. 3, Sector 23, Near Nerul Station, Navi Mumbai 400706)	Accused Kaynat Sahil Khan	Rs.13,572.10/-

04	HDFC bank account No. 50100377899636. (HDFC bank Branch- Shop No. 14, Ground Floor, Coaral Crest, Plot No. 3, Sector 23, Near Nerul Station, Navi Mumbai 400706)	Accused Kaynat Sahil Khan and Mohammad ismail Salim sidhique	Rs.6044.88/-.

16. In addition, in the bank accounts of the applicant, the following aggregate transactions were effected.

Sr. No.	Name of the account holder	Bank	Account No.	Period	Value of transactions
1	Kaynat Sahil Khan	Yes Bank	021352400000075	29th August, 2021 to 16th August, 2023	Rs.37,96,168/-
2	Kaynat Sahil Khan	HDFC bank	50100309009247.	17th October, 2021 to 13th August, 2023	Rs.19,42,890/-
3	Joint Kaynat Sahil Khan and Mohammad ismail Salim sidhique A/c	HDFC	50100377899636	2nd November, 2020 14th August, 2023	Rs.31,03,099/-

17. The investigation has further revealed that the following co-accused and absconding accused have credited huge amounts in the accounts of the applicant.

Sr. No.	Name	Amount
1	Saeed Sajjad Shaikh	3,56,000/-
2	Mohammad Ismail Salim Sidhique	6,22,008/-
3	Shamsuddin Nijamuddin Shah	9,23,800/-
4	Ali Javad Jafar Mirza	23,24,000/-
5	Faizan Ajmat Khan	2,31,000/-
6	Kaynat -Applicant	25,82,900/-

18. Mr. Mandar Goswami, the learned Counsel for the applicant attempted to salvage the position by placing reliance on a decision of Kerala High Court in the case of **Amal E. and Others Vs. State of Kerala**[4], wherein the Kerala High Court released the accused therein on bail as apart from the credit of a sum of Rs.35,000/- to the account of a accused therein by the co-accused, and other two transactions of credit of Rs.35,000/- and 4,000/- to the account of the co-accused, there was nothing to show the involvement of the accused therein.

19. Evidently, in the instant case, there are numerous transactions involving huge amounts in the accounts of the applicant. Apart from the accused No. 1 – the husband of the applicant, the other co-accused and absconding accused have transferred huge amount over a period of time, into the accounts of the applicant. Prima facie, proceeds of illicit drug trafficking have been converted into immovable properties, movables and jewelleries, etc. A1 has antecedents of the offences

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punishable under Section 21B, 22C, and 29 of the NDPS Act, 1985. Prima facie, there is material to show that the A1 is the kingpin of the drug cartel. A1 and the applicant have, prima facie, amassed huge wealth out of the illegal trafficking in drugs.

20. In the circumstances, the factors that no contraband was found in the possession of the applicant, and the applicant has been named as the person, who was running a drug cartel along with A1, by the co-accused, do not detract materially from the charge under Section 29 of the NDPS Act, 1985. Prima facie, the applicant has no known source of income to support the acquisition of such huge property. Moreover, multiple transactions with the co-accused and absconding accused lend prima facie support to the prosecution case that the applicant is the privy to the conspiracy.

21. In my considered view, the interdict contained in Section 37 of the NDPS Act, 1985 comes into play and there are no grounds to believe that the applicant is not guilty of the offences for which she has been arraigned. Nor the Court can record a finding that the applicant will not indulge in identical offences, if released on bail. The application, therefore, deserves to be rejected.

22. Hence, the following order.

ORDER

(i) The Application stands rejected.

(ii) 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.)