

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3610 OF 2023

SANTOSH
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KULKARNI

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Date: 2024.04.24
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Mohammed Ali Hussain Nagri
Versus

...Applicant

The State of Maharashtra

...Respondent

Mr. S. R. Guad, for the Applicant.

Ms. Ranjana Humane, APP for the State/Respondent.

API Santosh Pawar, Property Cell, Crime Branch, Mumbai,
present.

CORAM: N. J. JAMADAR, J.

DATED: 19th APRIL, 2024

ORDER:-

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

2. The applicant, who is arraigned in CR No.323 of 2023 registered with Byculla Police Station, Mumbai, for the offences punishable under Sections 22(c) read with Section 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act, 1985"), has preferred this application to enlarge him on bail.

3. On 7th July, 2023 while the DCB CID police were on patrolling duty at Navanagar Lane near Dockyard Police Station, the applicant was found standing thereat in

suspicious circumstances. The applicant tried to flee away, while concealing a black clothe bag, which he was carrying. The applicant was accosted. Upon being confronted the applicant gave evasive answers. As it was raining, the applicant was taken to a spot nearby, namely, Dutta Mandir. The applicant was apprised of his right to be searched before the nearest Magistrate or Gazetted Officer. The applicant declined to avail the said right. Thereupon, a search was conducted. In the black clothe bag, which the applicant was carrying, two plastic bags containing white and yellowish powder were found. The said substance appeared to be Mephedrone (MD). It was weighed. The substance in the first plastic bag weighed 97 grams and the second 36 grams. The contraband and other articles were seized under seizure panchnama and the applicant came to be arrested.

4. Mr. Gaud, the learned Counsel for the applicant, submitted that the alleged search operation has been recorded in CCTV. There is inconsistency in the time-lag regarding the search and seizure operation. It was urged that the applicant came to be picked up from his room. An endeavour was made to support said contention by placing reliance on the CCTV footage which, according to the

applicant, indicates that the applicant was not arrested on the date and time as alleged by the prosecution. Mr. Gaud further submitted that there is non-compliance of the provisions contained in Section 42 of the NDPS Act, 1985. Nor the provisions contained in Section 50 of the NDPS Act have been scrupulously complied with. Therefore, the applicant deserves to be enlarged on bail.

5. The learned Special Judge declined to accept the invitation of the applicant to delve into the CCTV footages in view of the decision of the Supreme Court in the case of *Prashant Dagajirao Patil vs. Vaibhav alias Sonu Arun Pawar*¹. In the said case, the Supreme Court, *inter alia*, enunciated that when a limited issue of grant of bail was pending for consideration before the High Court, it was not appropriate for the High Court to pass directions calling upon the Investigating Officer to examine the CCTV footage and submit a report as it would bear on the trial.

6. The aforesaid view of the learned Special Judge appears impeccable. At this stage, the Court cannot delve into the aspect of veracity and reliability of the CCTV footage sought to be pressed into service on behalf of the applicant to

¹ (2021) 1 REC Cri R 594 (SC).

improbabalise the prosecution version. That would be a matter for trial.

7. The ground of alleged non-compliance of the provisions contained in Section 50 of the NDPS Act, 1985, in the facts of the case, does not merit countenance. From the perusal of the allegations in the FIR and the seizure panchnama, it becomes evident that the applicant was specifically apprised of his right to be searched before the nearest Magistrate or Gazetted Officer. The appraisal memo (page 122) lends *prima facie* credence to the prosecution version that the applicant was apprised of the said right.

8. The ground of non-compliance of the provisions contained in Section 42 of the NDPS Act, 1985 also appears to be devoid of substance. As noted above, the applicant was apprehended at a public place, in a case of chance recovery during the course of patrolling and not in any building, conveyance or enclosed place on the basis of a prior information. Thus, the provisions contained in Section 42 of the NDPS Act, 1985 were not at all attracted.

9. Mr. Gaud made an endeavour to persuade the Court to hold that though the provisions contained in Section 52A of the NDPS Act, 1985 have been complied with, yet, the

inventory is infirm. There is discrepancy in the weight of the contraband which was recovered under the seizure panchnama and produced before the learned Magistrate, at the time of inventory.

10. I do not find that there is such infirmity so as to jettison away the prosecution case. The material on record indicates that a requisition for inventory was sent to the jurisdictional Magistrate on 10th July, 2023. The learned Magistrate conducted the inventory of the bulk and sample, and certified its correctness on 28th July, 2023. There was no such delay as would vitiate the proceedings under Section 52A of the NDPS Act, 1985.

11. The ground of discrepancy in the weight of the contraband is also not well founded. The contraband weighed 133 grams at the time of seizure. Before the Magistrate it weighed 135 grams. The difference is minor. The learned Magistrate certified that due to change in weighing scale, the bulk weighed 135 grams in Court.

12. The situation which thus obtains is that the applicant was found in possession of commercial quantity of MD. *Prima facie* it appears that there was scrupulous compliance of the statutory requirements. The interdict contained in

Section 37(1)(b)(ii) of the NDPS Act, 1985 comes into play. There is no substantial probable cause which would sustain an inference that the accused is not guilty of the offences for which there he has been arraigned. Therefore, the applicant cannot be released on bail.

13. Hence the following order:

: O R D E R :

- (i) 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.]