

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4013 OF 2023

Mustafa Sayyed Kayyum Sayyed	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Atul Sarpane i/b. Mr. Kamlesh Satre, for the Applicant.
Mr. S.R. Agarkar, APP, for the Respondent/State.
Mr. Phalke, PSI, ANI, Bandra Unit.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 18, 2024

P.C.:

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

2. By this application under section 239 of Code of Criminal Procedure, 1973 the applicant who is arraigned in C.R. No. 96 of 2021 registered with ANC Bandra Unit, Mumbai for the offences punishable under sections 22(c), 25, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act, 1985) and section 201 of the Indian Penal Code, 1860 seeks to be enlarged on bail.

3. Pursuant to a specific information, the police conducted a surveillance at Sakinaka. The co-accused No. 1 Cristina @ Ayesha was found carrying a small purse. Her movements appeared to be suspicious. She was accosted. After compliance of the provisions contained in section 50 of the NDPS Act, 1985, personal search was

conducted. In the purse which the co-accused Cristina was carrying 'white substance' was found. It transpired that the said substance was Mephedrone (MD). It weighed 50 gms. The contraband articles were seized and the samples were collected. Co-accused Cristina disclosed that she had acquired the said substance from co-accused Rajkumar Rajhans. Eventually, co-accused Rajkumar came to be arrested on 17th November, 2021. The co-accused No. 2 Nikhil Lohar came to be arrested on 16th November, 2021.

4. Investigation further revealed that the applicant was also a part of the drug cartel. The applicant came to be arrested on 21st December, 2021. Pursuant to the disclosure statement made by the applicant 15 gms. of MD was recovered from the house of the applicant.

5. The learned counsel for the applicant submitted that contraband articles allegedly recovered at the instance of the applicant was only 15 gms which is intermediate quantity. There is no material on record to indicate that there was conspiracy and the substance recovered from the possession of accused No. 1 Cristina was supplied by the applicant. On the contrary, the statement of accused No. 1 Cristina indicates that the said substance was procured from accused No. 3 Rajkumar.

6. In opposition to this, the learned APP submitted that there

are conversations and an amount of Rs. 42,820/- was credited by accused No. 1 Cristina to the account of the applicant. These factors indicate that the applicant has been indulging in the sale of the contraband articles

7. Evidently, there is an interval of time between arrest of accused No. 1 Cristina and the applicant. Pursuant to the disclosure statement, allegedly made by the applicant, 15 gms MD only was recovered. Whether there was any conspiracy to which the applicant and accused No. 1 Cristina were privy is a matter for adjudication at the trial. The submission on behalf of the applicant that the amount which was credited by accused No. 1 Cristina to the account of the applicant cannot be co-related with the substance which was allegedly found in possession of accused No. 1 Cristina prima facie carries some substance.

8. The quantity found in possession of the applicant is intermediate and thus the interdict contained in section 37 of the NDPS Act, 1985 does not come into play. The applicant has been in custody since 2nd December, 2021. It is unlikely that the trial can be concluded in a reasonable period. The Court is informed that there are no antecedents of the applicant.

9. In the aforesaid view of the matter, having regard to the quantity of contraband found at the instance of the applicant and

the period of incarceration, I am inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant be released on bail in C.R. No.96 of 2021 registered with ANC Bandra Unit on furnishing a P.R. Bond of Rs. 50,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at ANC Bandra Unit on the first Monday of every alternate month in between 11 am to 1 pm for a period of three years or till conclusion of the trial whichever is earlier.
- 4] The applicant shall not indulge in any activity for which he has been arraigned in this case.
- 5] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.
- 6] 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.
- 7] The applicant shall regularly attend the proceedings before

the jurisdictional Court.

8] 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.)