



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.4157/2023

JAIPRAKASH BHATT @ JITU

..APPLICANT

VS.

UNION OF INDIA & ANR.

..RESPONDENTS

Adv. Ashwini Achari a/w Adv. Taraq Sayed a/w Adv. Alisha Parekh for the Applicant.

Ms. Aruna S. Pai, SPP for Respondent No.1.

Smt. Sangeeta D. Shinde, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : APRIL 12, 2024.

P.C. :

1. Heard learned counsel for the applicant and learned counsel for respondent No.1.
2. This is an application for bail in respect of the offence punishable under Sections 8(c), 22(c), 27, 27A, 28, 29, 30 and 35 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act" for short) vide File No. NCB/MZU/CR-73/2021 with Narcotics Control Bureau (NCB), Mumbai Zonal Unit, Mumbai.
3. Learned SPP vehemently opposed the application. It is

submitted that by the panchnama dated 28/07/2021, 103.40 gms of Mephedrone (MD) i.e. a commercial quantity was recovered from the conscious possession of accused Nos. 1 and 2 i.e. Lazinebi Usman Khan @ Mehak and Raj Kumar Panday respectively. Accused Nos. 1 and 2 were placed under arrest on 29/07/2021. On the basis of the investigation and custodial interrogation of the accused persons, a follow up action was taken and 10.2 gms of MD was recovered under panchnama dated 26/08/2021 from the conscious possession of accused No.3 i.e. Abusufiyan Shakil Ahmed. On the basis of the statements made by the accused persons, the respondent - NCB intercepted the present applicant i.e. accused No. 4 along with accused No.5- Vijay Kumar Singh. The applicant and accused No.5 were placed under arrest on 11/09/2021. Thereafter, accused No.6- Shariq Wali was arrested on 16/09/2021 with 5 gms of MD from his conscious possession. Accused No.7 was arrested with 58.5 gms of MD i.e. commercial quantity and accused No.8 was arrested with 10 gms of MD from their conscious possession.

4. Learned SPP for respondent No.1 submitted that the materials on record would clearly demonstrate the connection of the applicant with the accused persons. Based on the information supplied, commercial quantity of MD was seized from the co-accused. It is submitted that C.R. has to be considered as a whole and not in isolation with regard to the quantities of contraband seized from each of the accused. It is submitted that the applicant is the purchaser of the seized contraband i.e. 103 gms of MD which is a commercial quantity. From the statement of accused No.1, the seized contraband was purchased by the applicant for selling to the customer. It is submitted that the seizure spot i.e. the hotel room in which the main accused Lazinebi was found with the contraband, was booked by the applicant. Learned SPP further drew my attention to the WhatsApp chats, statements of the co-accused and the materials in the form of financial transactions between the co-accused and the applicant's wife and daughter to submit that the application should be rejected. It is the prosecution's case that the applicant is the main dealer of contraband in the

areas of Mumbai i.e. Marol and Andheri.

5. Learned counsel for the applicants submitted that the materials against the applicant are mainly in the nature of the statements of the co-accused. She further submitted that such statements of the co-accused cannot be used against the present applicant in view of the decision of the Supreme Court in the case of **Toofan Singh Vs. The State of Tamilnadu**¹. It is pertinent to note that as per the statement of the co-accused, the applicant used to purchase the contraband from Vijay Kumar Singh @ Rehan Chiken @ Monty. As per the statement of the co-accused, Shariq Wali Sayed, the applicant was purchasing contraband from him and payments were made on Google Pay or by cash.

6. It can thus be seen that the financial transactions are in the name of the wife and daughter of the present applicant. There is no recovery of the contraband from the applicant. The co-accused from whom the contraband was allegedly purchased have been enlarged on bail. On the basis of the statement of accused No.1 Lazinebi said that the contraband found in the hotel room belonged to the

¹ 2013 16 SCC 31

present applicant, the applicant was arraigned as an accused. The applicant has been incarcerated for more than 2½ years from the date of his arrest i.e. 11/09/2021. The trial is unlikely to conclude anytime soon as even the charge is not framed. Except for the offence registered against the applicant under the Indian Penal Code in the year 2012, no other criminal antecedent is reported against him. The applicant is implicated on the basis of the statements of the co-accused.

7. In my opinion, the facts and circumstances of this case have prevailed upon me to form an opinion that the twin conditions imposed by Section 37 of the NDPS Act can be overcome. It is submitted by the learned counsel for the applicant, on instructions, that if bail is granted to the applicant, he will not enter the jurisdiction of Mumbai/Mumbai Suburban and will stay in Thane district till the conclusion of the trial. It is unlikely that the applicant will commit any offence during the pendency of the trial as I propose to impose stringent conditions while enlarging the applicant on bail. Hence, the following order:

ORDER

- (a)** The application is allowed.
- (b)** The applicant- Jaiprakash Bhatt @ Jitu in connection with File No. NCB/MZU/CR-73/2021 registered with NCB, Mumbai Zonal Unit, Mumbai, shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more local sureties in the like amount.
- (c)** Except for attending the trial and for the purpose of reporting to the Investigating Officer the applicant shall not enter the municipal jurisdiction of Mumbai/Mumbai Suburban district, till the trial concludes
- (d)** The applicant shall stay in Thane district. He shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.
- (e)** The applicant shall attend the Investigating Officer of NCB, Mumbai Zonal Unit, Mumbai, once in every week, i.e. on Tuesday, between 11.00 a.m. and 1.00 p.m.
- (f)** 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. The applicant shall not tamper with evidence.
- (g)** The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.
- (h)** The applicant shall surrender his passport to the

investigating officer. If the applicant does not have a passport, the applicant shall file an affidavit before the trial Court to that effect.

(i) The application is disposed of.

(M. S. KARNIK, J.)¹