

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4184 OF 2023

Roma Arif Shaikh ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Dilip Mishra i/b. Mr. Ayaz Khan and Ms. Zehra Charanta, for
the Applicant.
Ms. Supriya Kak, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.
DATE : APRIL 29, 2024

P.C.:

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

2. The applicant, who is arraigned in C.R. No. 31 of 2023
registered with Anti Narcotic Cell for an offence punishable under
sections 22(c) and 29 of the Narcotic Drugs and Psychotropic
Substances Act, 1985 (the NDPS Act, 1985) seeks to be enlarged on
bail.

3. On 19th April, 2023 the Anti Narcotic Cell police were on
patrolling duty. At Jail Road, Dongri (E), Mumbai, Kurban Shaikh
(A1) and Akbarali Shaikh (A2) were found moving in suspicious
circumstances. They were accosted. In the personal search of
accused Nos. 1 and 2, after complying with the mandate contained
in NDPS Act, 1985, Kurban Shaikh (A1) was found with a
transparent plastic pouch containing Mephedrone (MD). It weighed

150 gms. In the search of Akbarali Shaikh (A2), 20 gms MD was also found. The incriminating articles were seized. Upon inquiry accused Nos. 1 and 2 disclosed that they were dealing in illicit drug trade in collaboration with Roma, the applicant herein. Thereupon, the applicant came to be apprehended on 3rd October, 2023.

4. Mr. Mishra, the learned counsel for the applicant, submitted that apart from the alleged disclosure made by the co-accused Kurban Shaikh (A1) and Akbarali Shaikh (A2), there is no material to connect the applicant with the alleged offence. No contraband was found in possession of the applicant. Nor there is any other material to rope her in by invoking provisions contained in section 29 of the NDPS Act, 1985. Thus, the applicant deserves to be enlarged on bail.

5. In opposition, Ms. Kak, the learned APP resisted the prayer for bail. It was submitted that apart from the disclosure made by the co-accused, Kurban Shaikh (A1) and Akbarali Shaikh (A2) there is material in the form of CDRs which indicates that the applicant was in regular touch with Kurban Shaikh (A1) and Akbarali Shaikh (A2). Therefore, the complicity of the applicant for the offence punishable under section 29 of the NDPS Act, 1985 can be said to have been prima facie made out.

6. I have perused the report under section 173 of the Code of

Criminal Procedure, 1973. Prima facie, I find substance in the submission of Mr. Mishra, the learned counsel for the applicant that the edifice to the prosecution case qua the applicant is sought to be built on the disclosure statement allegedly made by the co-accused Kurban Shaikh (A1) and Akbarali Shaikh (A2). It is imperative to note that the even the said fact does not emerge from the discovery made by Kurban Shaikh (A1) and Akbarali Shaikh (A2) under section 27 of the Evidence Act, nor is it the prosecution case that the applicant was found in possession of any contraband substance.

7. In the aforesaid view of the matter, the prosecution seeks to bank on the CDR to show that the applicant was in constant touch with Kurban Shaikh (A1) and Akbarali Shaikh (A2). CDR, on its own, without transcript of the conversation or any other material to establish the nexus between the applicant and the co-accused cannot be said to be a circumstance solely sufficient to sustain the indictment under section 29 of the NDPS Act, 1985. If there are other concomitant circumstances, the fact that the applicant was in constant touch with the co-accused may have some relevance. However, in the absence thereof, it may be rather hazardous to draw an inference of conspiracy solely on the basis of CDR. Evidently, the prosecution has not placed on record the transcript of the conversation so as to nail the applicant as a co-conspirator.

8. The applicant is a woman. She has been in custody since 3rd October, 2023. Prima facie, there is no material to connect the applicant with the alleged offences apart from the statement of the co-accused Kurban Shaikh (A1) and Akbarali Shaikh (A2).

9. For the foregoing reasons, I am persuaded to hold that in the facts of the case, the interdict contained in section 37 of the NDPS Act, 1985 may not be attracted. The Court is not informed that the applicant has antecedents.

Hence, the following order.

ORDER

1] The application stands allowed.

2] The applicant be released on bail in C.R. No. 31 of 2023 registered with Anti Narcotic Cell, Mumbai, on furnishing a P.R. Bond of Rs. 1,00,000/- with one or more sureties in the like amount.

3] The applicant shall mark her presence at Anti Narcotic Cell, Mumbai on the first Monday of every month 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 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.

5] The applicant shall furnish her contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] 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.)