

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.161 OF 2024

Mohammed Farukh Mohammed Umar Tak] .. Applicant
vs.
State of Maharashtra] .. Respondent

Mr.Advait Tamhankar i/b Aashish Satpute for the Applicant.
Ms.Sangita Phad, APP for the State.

CORAM : NITIN W. SAMBRE, J

RESERVED ON : 23rd SEPTEMBER, 2024
PRONOUNCED ON : 3rd OCTOBER, 2024.

P.C. :

1 The Applicant/Accused in Crime No.6/2022 registered with Pune ATS, is seeking regular bail.

2 The aforesaid offence is made punishable under Section 8(c), 22(c) and 29 of the Narcotic Drugs And Psychotropic Substances Act, 1985, (for short "NDPS Act").

3 The Applicant, on secret inputs was apprehended on 02.05.2022 after having found in possession of 118 Grams of Mephedrone costing around Rs.11,80,000/-. The seizure carried out in the investigation of

the aforesaid offence, is of commercial quantity.

4 In the aforesaid backdrop, the learned counsel for the Applicant while seeking regular bail would urge that the Respondent/Investigating Officer has failed to follow the procedure as contemplated under Section 42 and 50 of the NDPS Act. So as to substantiate the aforesaid contention, my attention is invited to the nature, the mode and manner in which the recovery was effected from the Applicant. The learned counsel would urge that since it is mandatory to follow the procedure laid down in the aforesaid provisions of the NDPS Act, the Applicant is entitled to be released on bail, as the recovery was neither effected by a Gazetted Officer, nor search.

5 The learned APP, while opposing the prayer for bail would urge that not only the mandatory procedure prescribed under Section 50 read with 41 to 43 of the NDPS Act is complied with, but also the report of Chemical Analyser certifies the contraband seized from the Applicant, being banned substance. It is claimed that the Applicant is already charge-sheeted and there is enough iota of evidence to directly connect the Applicant to the crime. As such, it is urged that the Application is liable to be rejected.

6 Having appreciated the rival claims, it is appreciated that on specific inputs the Applicant was apprehended on 02.05.2022 at about 6.30 p.m. and he was sensitized about his right under Section 41, 42, 43 and 50. The written consent given by the Applicant for carrying out personal search by the Police Officer sufficiently speaks of compliance of the statutory mandate as provided under the NDPS Act.

7 Apart from above, the station diary entry was made about the offence and the same was immediately forwarded to the immediate superior by the Assistant Police Inspector. As such, there is compliance of Section 42, so also Section 50.

8 Apart from above, the quantity seized from the Applicant appears to be certified by the Chemical Analyser to be a banned substance under the NDPS Act. The said quantity is commercial in nature. In the aforesaid backdrop, prima-facie, no technical flaw could be noticed in the investigation against the Applicant. Perusal of the investigation papers depict that there is strong evidence available against the Applicant so as to infer his prima facie involvement in the offence in question and the offence being grave in nature, I see no reason to consider and grant the prayer for releasing the Applicant on bail.

9 Apart from above, the Courts below have consequently rejected his regular Bail Applications by recording the cogent reasons.

In this background, the Application stands rejected.

(NITIN W. SAMBRE, J)