



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.806 OF 2024**

Riyaz Abdul Sattar Memon	...	Applicant
versus		
The State of Maharashtra	...	Respondent
WITH		
BAIL APPLICATION NO.3008 OF 2023		

Reshma Sanjaykumar Chandan	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. Rizwan Merchant with Mr. Ayaz Khan i/by Kunal V. Phoole, for in BA 806 of 2024.
Mr. Khushal Parmar with Ms. Anjali More, for Applicant in BA 3008 of 2023.
Mr. S.R.Aagarkar, APP for State.
API Mr. Amol Kadam, ANC Worli, Crime Branch, present.

CORAM: N.J.JAMADAR, J.

**RESERVED ON : 18 APRIL 2024
PRONOUNCED ON : 17 MAY 2024**

ORDER :

1. The Applicants, who are arraigned in NDPS Special Case No.1219 of 2022 arising out of C.R.No.25 of 2022 registered with ANC Police Station Mumbai, for the offences punishable under Sections 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, have preferred these applications to enlarge them on bail.
2. On the night intervening 28th and 29th March 2022, ANC police were on patrolling duty. When the police party reached in front of Mata Ramabai Ambedkar

Play Ground, Ghatkopar Mankhurd Link Road, Govandi, Mumbai – 400 043, at about 3.30 a.m., on 29 March 2022, Shamshulla Khan (A1) was found waiting for someone in suspicious circumstance. He tried to flee away after noticing the police party. He was accosted. He was carrying a cloth bag. After apprising him of his right to be searched before the nearest Magistrate or Gazetted Officer, a search was conducted. In the said search, a small transparent plastic pouch, a digital weighing scale and 72 empty plastic pouches were found. The plastic pouch contained a white substance. It was Mephedrone (MD). It weighed 250 gms.

3. Pursuant to the disclosure made by Shamshulla Khan (A1), Ayub Shaikh (A2) came to be apprehended. Ayub Shaikh (A2) led the police party to his house. 2.750 kg MD was found in the house of Ayub Shaikh (A2).

4. The prosecution alleges, the investigation revealed that Reshma Sanjaykumar Chandan (A3) – the applicant in BA 3008 of 2023, was the supplier of the contraband to accused Nos.1 and 2. Reshma (A3) was arrested.

5. Reshma (A3) disclosed that Riyaz (A4) was her younger brother and the latter supplied drugs to her. Reshma (A3) made a disclosure statement on 2 August 2022 and volunteered to show the place where Riyaz Abdul Sattar Memon (A4) – the applicant in BA 806 of 2024, usually met Reshma (A3). Pursuant to the said disclosure statement, Reshma (A3) led the police party to the gate in front of a mosque in the campus of Jogeshwari Education Trust Compound and, while Riyaz (A4) was

speaking with Reshma (A3), the former came to be arrested. No contraband was found on the person of Reshma (A3) and Riyaz (A4).

6. Riyaz (A4), in turn, made a disclosure statement to point out the place where he met Premprakash Singh (A5), the supplier of drugs to Riyaz (A4). Eventually, Premprakash Singh (A5) came to be apprehended near Dahisar Metro Railway Station at the pointing out by Riyaz (A4).

7. Premprakash Singh (A5) was the manufacturer of MD. In the search pursuant to the disclosure by Premprakash Singh (A5), 701.74 kgs. MD was seized. 959 gms MD and raw material was also seized from the chemical factory Namao Chem Pvt. Ltd., Ambernath, Thane. Kiran Choudhari (A6), Manager of the factory, came to be arrested. It further transpired that Premprakash Singh (A5) got the MD manufactured at the chemical factories, Infinity Research Development, GIDC Panoli, Ankleshwar, Gujarat and Parmax Pharma Factory, Hadamtali, Rajkot, Gujarat. Ramendrakumar G. Dixit (A7), Controller of Infinity, was also apprehended. In the search conducted on 13 August 2022, at Infinity Research and Development Factory, 1732.250 mg. MD was seized. Jinendra Vora (A8), director of Namao Chem Factory, was also arrested. Alkesh R. Gosalia, who was the director of Parmax Pharma, wherefrom Prem Prakash Singh (A5) got the MD manufactured, passed away.

8. Mr. Rizwan Merchant, learned Counsel for the Applicant -Riyaz (A4) submitted that Riyaz (A4) has been roped in only for being the brother of Reshma

(A3). No contraband was found in possession of Riyaz (A4). The disclosure statement made by Reshma (A3) cannot be used as a legal evidence against Riyaz (A4). The alleged financial transactions between the applicant Riyaz (A4) and Reshma (A3) do not incriminate Riyaz (A4) as the justifiability of those transactions is borne out by the relationship between Riyaz (A4) and Reshma (A3).

9. The financial transactions, or for that matter CDR, showing that the applicant was in touch with Reshma (A3), in the circumstances of the case, and especially in the backdrop of the relationship between them, do not have any incriminating tendency. No material has been placed on record to connect the applicant with Premprakash Singh (A5), the alleged manufacturer of the drugs. Mr. Merchant further submitted that the applicant has no antecedents. Therefore, further detention of the applicant Riyaz (A4), who has been in custody since 2 August 2022, is wholly unwarranted.

10. Mr. Parmar, learned Counsel for the Applicant – Reshma (A3), submitted that pursuant to the alleged disclosure statement made by Reshma (A3), no fact can be said to have been discovered. No contraband article was found in possession of Riyaz (A4) whom the applicant Reshma (A3) had allegedly pointed out.

11. Mr. Parmar supplemented the submissions of Mr. Merchant, on the aspect of the financial transactions and CDR. It was submitted that the financial transactions between Reshma (A3) and Ayub Shaikh (A2) also do not incriminate

Reshma (A3) as there were other transactions between them. Therefore, as no contraband was recovered from the possession of the Applicant – Reshma (A3), she deserves to be enlarged on bail.

12. Mr. Aagarkar, learned APP stoutly resisted the prayer for bail. It was submitted that huge quantity of 2428 kgs. MD has been recovered in the instant crime. The applicants were part of the chain which was trafficking in drugs in a systematic manner. The fact that no contraband article was found on the person of the applicants, or for that matter, at the instance of the applicants, is not of decisive significance. The role attributed to the applicants is that of procuring contraband from their suppliers and further supplying the same to their distributors/purchasers. Having regard to the huge quantity of the drugs, the prayer for bail must be considered in the totality of the circumstances, and not based on the role attributed to the individual applicants, urged Mr. Aagarkar. At any rate, the financial transactions and CDR nail the applicants.

13. Evidently, from the perusal of the report under Section 173 of the Code and the documents annexed with it, it becomes clear that a chance recovery of 250 gms MD from accused No.1 led to recovery of a huge quantity i.e. 2428 kg and 950 gms of MD. In the process, the investigation agency could unearth three chemical factories where the contraband substance was allegedly being manufactured. Involvement of Premprakash Singh (A5), Kiran Choudhari (A6), Ramendrakumar G.

Dixit (A7) and Jinendra Vora (A8), who were associated with the alleged manufacturing of MD, was unearthed. Quantity of contraband substance allegedly recovered pursuant to the disclosure made by the accused and in the raids, during the course of investigation, puts the court on guard. However, the court cannot lose sight of the role attributed to the applicants and the material pressed into service qua each of them, to establish their complicity.

14. To begin with, the case of Riyaz (A4). In essence, there are three circumstances which have been arrayed against Riyaz (A4). First, the discovery allegedly made by Reshma (A3), his sister, naming Riyaz (A4) as her supplier. Second, the financial transactions between Riyaz (A4) and Reshma (A3). Thirdly, the discovery allegedly made by Riyaz (A4) leading to the apprehension of Premprakash Singh (A5), the alleged supplier of Riyaz (A4) and the subsequent recovery of huge quantity of MD from three chemical factories.

15. On the first count, Mr. Rizwan Merchant would submit that the discovery allegedly made by Reshma (A3) cannot be used against Riyaz (A4). An endeavour was made to urge that it is well nigh settled that the disclosure statement made by an accused is not legal evidence qua co-accused. Reliance was placed on the orders passed by this Court in the cases of **Ranjan Shaam Mawar V/s. The State of Maharashtra**¹, **Farida Nasim Shaikh @ Aapa V/s. The State of Maharashtra**²,

1 BA No.3880 of 2021 dated 11 October 2022

2 BA No.3018 of 2021 dated 2 August 2022

Sandip @ Pappu @ Ravindra Shivaji Nikanth V/s. The State of Maharashtra³ and **Moin Yusuf Attari V/s. The State of Maharashtra**⁴ to bolster up the submission that the statement of the co-accused cannot be pressed into service to establish the complicity of Riyaz (A4).

16. The submission appears well founded. There can be no duality of opinion that the disclosure statement made by one accused is not a legal evidence against the non-maker co-accused. To what extent the discovery under Section 27 of the Evidence Act, can be fastened against the accused who makes such discovery, is also a matter for adjudication at the trial. Only that much of the information which distinctly relates to the fact thereby discovered becomes admissible under Section 27 of the Act.

17. To the similar lines are the observations of this Court in the cases adverted to above. Thus, the statement of Reshma (A3) to the effect that she had allegedly procured contraband from the applicant Riyaz (A4) does not constitute legal evidence qua Riyaz (A4). Nor the said statement can be said to be distinctly related to the fact thereby discovered, namely, the place at which Reshma usually met Riyaz.

18. In the aforesaid circumstances, the relationship between Reshma (A3) and Riyaz (A4) further erodes incriminating tendency of the said discovery. The conversation, or for that matter, the transactions between Riyaz (A4) and Reshma (A3)

3 BA No.2956 of 2022 dated 8 March 2024

4 Criminal Revision Application No.334 of 2019 dated 11 December 2019

are, prima facie, compatible with the innocence as well of Riyaz (A4).

19. What is of critical salience is the fact that no contraband was recovered from the possession of Riyaz (A4). Thus, it cannot be said that the alleged discovery made by Reshma (A3) led to the recovery of the contraband substance from Riyaz (A4) so as to incriminate the latter as well. That leaves the circumstance of financial transactions between Reshma (A3) and Riyaz (A4).

20. Learned APP submitted that the applicant Riyaz (A4) had received a sum of Rs.6,73,000/- from Reshma (A3). The material on record further indicates that Riyaz (A4) had also transferred certain amounts to the account of Ayub Shaikh (A2). A sum of Rs.1,000/- was transferred on 25 May 2021 and another sum of Rs.4,000/- was transferred on 31 May 2021 to the account of Ayub Shaikh (A2). The transfer of the said amount of Rs.6,73,000/- by Reshma (A3) to Riyaz (A4) is a very strong prima facie circumstance to incriminate the applicant – Riyaz (A4).

21. Mr. Merchant, learned Counsel for the Applicant Riyaz (A4), would urge that by the own showing of the prosecution, Reshma (A3) and Riyaz (A4) are the siblings. The credit of the said amount from the accounts of Reshma (A3), by itself, in the backdrop of the relationship between Reshma (A3) and Riyaz (A4) does not constitute an incriminating circumstance. An endeavour was made to urge that Riyaz (A4) had also paid/transferred the amounts to Reshma (A3). Since no contraband as such was recovered from the possession of Riyaz (A4), the said circumstance of the

financial transactions between Reshma (A3) and Riyaz (A4) does not have incriminating tendency, submitted Mr. Merchant.

22. Since the applicants are arraigned for being the alleged conspirators in a criminal conspiracy to commit the offence punishable under the Act, 1985, mere fact that no contraband was recovered from the person, or at the instance, of the applicant, cannot be the sole consideration. The conspiracies, it is well recognized, are hatched in secrecy and rarely direct evidence of conspiracy is available. If there are attendant circumstances and concomitant factors which indicate that the applicants were privy to the said conspiracy, the fact that no contraband was recovered from the applicants may pale in significance.

23. A useful reference in this context can be made to the decision of the Supreme Court in the case of Narcotics Control Bureau V/s. Mohit Aggarwal⁵ wherein the following observations were made :

“16. Coming back to the facts of the instant case, the learned Single Judge of the High Court cannot be faulted for holding that the appellant- NCB could not have relied on the confessional statements of the respondent and the other co-accused recorded under Section 67 of the NDPS Act in the light of law laid down by a Three Judges Bench of this Court in Tofan Singh (supra), wherein as per the majority decision, a confessional statement recorded under Section 67 of the NDPS Act has been held to be inadmissible in the trial of an offence under the NDPS Act. Therefore, the admissions made by the respondent while in custody to the effect that he had illegally traded in narcotic drugs, will have to be kept aside. However, this was

5 AIR 2022 SC 3444

not the only material that the appellant- NCB had relied on to oppose the bail application filed by the respondent. The appellant-NCB had specifically stated that it was the disclosures made by the respondent that had led the NCB team to arrive at and raid the godown of the co-accused, Promod Jaipuria which resulted in the recovery of a large haul of different psychotropic substances in the form of tablets, injections and syrups. Counsel for the appellant-NCB had also pointed out that it was the respondent who had disclosed the address and location of the co-accused, Promod Jaipuria who was arrested later on and the CDR details of the mobile phones of all co-accused including the respondent herein showed that they were in touch with each other.

17. Even de hors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant-NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by the submission made by learned counsel for the respondent and the observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage.”

24. In the case at hand, qua Riyaz (A4), the only material seems to be credit of the amount by Reshma (A3). It is pertinent to note that apart from those financial transactions between Reshma (A3) and Riyaz (A4), there are no concomitant circumstances. It is not a prosecution case that there is material to show the financial transactions between Riyaz (A4) and Premprakash (A5), the alleged supplier of Riyaz

(A4). Nor CDR showing that Riyaz (A4) was in regular touch with Premprakash Singh (A5), the alleged supplier, is pressed into service. The disclosure statement made by Riyaz (A4), as noted above, was to point out the place where he allegedly met Premprakash Singh (A5). It is not a case that Premprakash Singh (A5) was apprehended along with the contraband on his person. Nor is it a prosecution case that Riyaz (A4) led the police party to the places wherefrom the contraband was seized.

25. In the aforesaid view of the matter, the submission on behalf of Riyaz (A4) that the financial transactions between Riyaz (A4) and Reshma (A3), his sister, cannot by themselves sustain the complicity of the applicant Riyaz (A4) for the offences for which he has been arraigned, carries some substance. In the circumstances of the case, the financial transactions between the brother and sister duo, in my considered view, do not bear the weight of the accusation against Riyaz (A4).

26. I am, therefore, persuaded to hold that in the absence of material to make out a prima facie case for the offences for which the applicant Riyaz has been arraigned, an inference may become justifiable that Riyaz (A4) may not be guilty of the offences for which he has been prosecuted. The applicant Riyaz (A4) has no antecedents. The Court may, therefore, be justified in drawing an inference that Riyaz (A4) may not indulge in identical offences, if released on bail.

27. The case of Reshma (A3), however, stands on a different footing. It is true, like Riyaz (A4), no contraband was found on the person of the applicant Reshma (A3). However, in addition to the financial transactions with Riyaz (A4), her brother, there are two circumstances which have incriminating tendency. First, as noted above, Ayub (A2) was found in possession of huge quantity of 2.760 kgs. MD. During the period 14 June 2021 to 22 March 2022, Ayub (A2), to whom Reshma (A3) allegedly supplied the contraband substance, had transferred a sum of Rs.5,31,450/- to Reshma (A3). Unlike Riyaz (A4), there is no justification for such transactions between the applicant Reshma (A3) and Ayub (A2). Prima facie, the transfer of the said amount by Ayub (A2) to Reshma (A3) appears to be towards the proceeds of the drugs which Reshma (A3) allegedly supplied to Ayub. Second, there is also material to indicate that the applicant Reshma (A3) was in touch with Accused Nos.1 and 2.

28. Cumulatively, the aforesaid circumstances indicate the involvement of Reshma (A3) in the alleged conspiracy to traffick in drugs. Therefore, at this stage, it would be difficult to draw an inference that there is a substantial probable cause to believe that Reshma (A3) may not be guilty of the offences for which she has been arraigned. The rigour contained in Section 37 of the Act, 1985 is attracted qua Reshma (A3).

29. The conspectus of aforesaid discussion is that the application of Reshma (A3) deserves to be rejected. Whereas, Riyaz (A4) deserves to be enlarged on bail.

30. Hence, the following order :

ORDER

(i) The Bail Application No.3008 of 2023 filed by Reshma Sanjaykumar Chandan stands rejected.

(ii) The Bail Application No.306 of 2024 preferred by – Riyaz Abdul Sattar Memon, stands allowed.

(iii) The applicant - Riyaz Abdul Sattar Memon be released on bail in C.R.No.25 of 2022 registered with ANC Mumbai on furnishing a PR bond in the sum of Rs.1,00,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iv) The applicant - Riyaz Abdul Sattar Memon shall mark his presence before ANC, Mumbai on first Monday of every month between 11 am to 1 pm for a period of three years or till the conclusion of the trial, whichever is earlier.

(v) The applicant shall not tamper with the prosecution evidence. 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.

(vi) The applicant shall surrender his passport before the Special Court and shall not leave India without prior permission of the Special Court.

(vii) On being released on bail, 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.

(viii) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(ix) 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 co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Applications disposed.

(N.J.JAMADAR, J.)