

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.812 OF 2024

Rushikesh Shashikant Hadwale ... Applicant

Vs.

State of Maharashtra ... Respondent

Mr. Dilip Mishra a/w. Mr. Ayaz Khan, Ms. Zehra Charania and Ms. Mallika Sharma for Applicant.

Mr. Sagar R. Agarkar, APP for the Respondent-State.

Mr. Ulhas P. Kholam, API, ANC Kandivali Unit, Mumbai.

CORAM : MANISH PITALE, J.
DATE : AUGUST 28, 2024

P.C. :

. Heard Mr. Mishra, learned counsel for the applicant and Mr. Agarkar, learned APP for the respondent-State.

2. The applicant was arrested on 11.05.2023 in connection with FIR No.44 of 2023 registered with Anti Narcotics Cell, Kandivali, Mumbai, for offences under Sections 8(c) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). The applicant has remained behind bars since then.

3. As per the FIR, the applicant was found in a suspicious state and upon confronting him, a packet was found in his hand, wherein LSD dots numbering 90 were found. It is stated that when the applicant was found in such a suspicious condition, two *panchas* were called and further action was undertaken. It is alleged that thereafter, the applicant showed further 430 dots of LSD in open space near the building where the applicant was apprehended. The applicant is a resident of the very same building. Thereafter, further steps were undertaken, FIR was registered and the applicant was arrested.

4. The learned counsel for the applicant submitted that in the present case, there are number of grounds on which the applicant is seeking bail. It is submitted that the FIR does not even mention the names of the two *panchas*, who are specifically named in the seizure *panchanama* dated 11.05.2023. It is further stated that that proceedings under Section 52-A of the NDPS Act before the Magistrate were undertaken belatedly. It is further stated that the documents pertaining to the said proceedings show a glaring anomaly in the sense that while the inventory *panchanama* and the application before the Magistrate are said to have been moved on 30.06.2023, the certificate issued by the Magistrate shows the prior date of 23.06.2023. It is further submitted that not all the dots were sent for analysis to the analyzer, despite the fact that in terms of observations made in the judgement of this Court dated **29.11.2021** passed in **Criminal Writ Petition No.2077 of 2021 (NCB Vs. Anuj Keshwani)**, it is necessary to send all such LSD dots for chemical analysis. It is further brought to the notice of this Court that the lady constable, who was part of the team which apprehended the applicant and who was also involved in proceedings under Section 52-A of the NDPS Act before the Magistrate, in her statement, made no reference to such seizure and inventory *panchanama*. It is crucial that the statements of the two *panchas* were also not recorded in the present case. It is further pointed out that the forwarding letter with which contraband was sent to the chemical analyzer records that 432 dots of LSD were found weighing 12.48 grams when the person of the applicant was searched. This is contradictory to the very case stated in the FIR.

5. The learned APP has opposed the aforesaid contentions by submitting that all such contentions are necessarily a matter for trial. It is submitted that the date wrongly mentioned at one place in the proceeding conducted under Section 52-A of the NDPS Act before the Magistrate, at this stage itself cannot inure to the benefit of the applicant.

It is submitted that the presence of two *panchas* is clearly recorded in the FIR and that even if the dots found in the open space are ignored, the remaining 90 dots themselves constitute commercial quantity of LSD, as the commercial quantity is 0.10 grams. It is submitted that therefore, no case is made out for granting bail.

6. This Court has considered the rival submissions in the light of the material on record. As much as the object of the NDPS Act is crucial for the well being of the society at large, as per the law that has been laid down over a period of time by various Courts, it is recognized that the procedure in such cases has to be complied with strictly and any flaw therein inures to the benefit of the accused person. It is also a well settled principle that the stringent test contemplated under Section 37 of the NDPS Act is required to be satisfied by the accused while seeking bail.

7. In the present case, this Court finds that from the very initial stages, the investigating authority appears to have proceeded in a casual manner. It is significant that the applicant, who does not have any criminal antecedents, is said to have been found in 'suspicious circumstances' in front of the building where he resides. Upon finding him in suspicious circumstances, the two *panchas* were summoned and thereupon further action was undertaken, purportedly in the presence of the two *panchas*. The seizure *panchanama* records the names of the two *panchas*, but the FIR only refers to the presence of the *panchas* without any reference to their names. This is a factor to be taken into consideration. It is also relevant that the statements of these two *panchas* are not recorded at all in the present case.

8. The constable, who was part of the team when the seizure *panchanama* was executed, as also when the proceedings were undertaken before the Magistrate under Section 52-A of the NDPS Act,

in her statement makes no reference to either of the two proceedings and simply makes a statement about having carried the contraband to the chemical analyzer.

9. The forwarding letter with which the samples were sent for analysis to the chemical analyzer records that 432 dots of LSD weighing 12.48 grams were found on the person of the applicant upon being searched. *Prima facie*, this appears to be contradictory to the very case of the investigating authority in the FIR. The 432 dots of LSD as per the FIR were found in the open space allegedly shown by the applicant, while 90 dots of LSD were found in a packet in his hand.

10. The documents pertaining to the proceedings under Section 52-A of the NDPS Act show that while the inventory *panchanama* and the application were moved on 30.06.2023, which is evident from the signature of the Magistrate on the order at page 39, the certificate issued in that context by the Magistrate records the prior date of 23.06.2023. If it was only the date typed below the certificate, it could have been a different matter, but it is significant that the date 23.06.2023 is written in hand by the Magistrate under his signature below the certificate. *Prima facie*, this creates doubt about the manner in which the proceedings were conducted before the Magistrate under Section 52-A of the NDPS Act, even if the delay of about 50 days in approaching the Magistrate is to be ignored.

11. This Court is of the opinion that considering the aforementioned factors, the applicant has made out a *prima facie* case in his favour on broad probabilities in order to satisfy the test contemplated under Section 37 of the NDPS Act. It is relevant to note that even according to the report of the chemical analyzer, only 89 and 230 dots in two exhibits were sent for chemical analysis. In the result of the analysis, it is simply stated that 'LSD was detected in both the exhibits'. The note appended

below the report states that 34 dots from exhibit 1 were used up for analysis and 165 dots from exhibit 2 were used up for analysis. It is evident that all the LSD dots allegedly recovered at the behest of the applicant were not sent for chemical analysis and this too is a factor that raises doubt about the procedural correctness of the steps taken by the investigating authority.

12. The aforesaid issues raised on behalf of the applicant cannot be said to be merely technical arguments raised in support of the present bail application. Considering the drastic consequences on persons accused of offences under the NDPS Act, it has been recognized that the procedure as contemplated under the NDPS Act and Rules has to be scrupulously followed, so that there is no scope to doubt the veracity of the samples collected, sent for chemical analysis, resulting in report of the chemical analyzer being taken on record. This Court is of the opinion that the applicant has indeed made out a case for being enlarged on bail. It is a matter of record that the applicant has remained behind bars from 11.05.2023.

13. In view of the above, the application is allowed in the following terms:-

(A) The applicant shall be released on bail in connection with FIR No.44 of 2023 dated 11.05.2023 registered with Anti Narcotics Cell, Kandivali, Mumbai, on furnishing P.R. Bond of Rs.50,000/- [Rupees Fifty Thousand only] with one or two sureties in the like amount to the satisfaction of the trial Court;

(B) The applicant shall cooperate with the trial Court for expeditious trial and he shall attend each and every date, unless exempted for reasons to be recorded in writing;

(C) The applicant shall report to the ANC, Kandivali, Mumbai

on the first Monday of every month between 10 a.m. and 12 noon, during the pendency of trial;

(D) The applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant, witnesses or any other person concerned with the case;

(E) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile number and residential address to the trial Court and update about the same, if there is any change.

14. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

15. The bail application stands disposed of accordingly.

(MANISH PITALE, J.)

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