

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.850 OF 2024

Irfan Iqramuddin Khan	...	Applicant
Vs.		
Union of India and another	...	Respondents

Mr. Anil G. Lalla a/w. Mr. Aryan K. Kotwal i/b. Lalla & Lalla for Applicant.
Mrs. Aruna Pai, Special Public Prosecutor for Respondent No.1 - UOI.
Mr. Prasanna Malshe, APP for Respondent No.2 - State.

CORAM : MANISH PITALE, J.
DATE : JUNE 20, 2024

P.C. :

1. Heard Mr. Lalla, learned counsel appearing for the applicant, Mrs. Pai, learned special counsel appointed to appear on behalf of the Narcotics Control Bureau (NCB) i.e. respondent No.1 and Mr. Malshe, learned APP appearing for the State.

2. The applicant is seeking bail in connection with NDPS Special Case No.244 of 2022 pending before the City Civil and Sessions Court, Mumbai for the offence under Sections 8(c) read with 27, 27A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. The record shows that two earlier bail applications of the applicant were rejected on merits by the Special Court. In this Court, the applicant filed Criminal Bail Application No.3474 of 2022, which came to be disposed of by an order dated 09.11.2023, whereby the applicant was permitted to withdraw the application with liberty to file a fresh bail application before the Special Court, relying upon CCTV footage and photographs.

4. In pursuance thereof, the applicant filed a fresh bail application before the Sessions Court specifically relying upon the CCTV footage and photographs. The said application was dismissed by an order dated 30.01.2024. As a consequence, the applicant is before this Court in the present application.

5. The learned counsel appearing for the applicant invited attention of this Court to *panchanama* dated 26.08.2021 executed in the present case, when the applicant was alleged to have been found in possession of 52 gms of Mephedrone. It is submitted that the commercial quantity is 50 gms of Mephedrone and therefore, in the present case, the applicant is alleged to have been found in possession of Mephedrone only 2 gms more than the commercial quantity. In that light, while referring to the *panchanama*, it is submitted that the contraband was weighed in a plastic pouch and considering the weight of the plastic pouch, the contraband can be said to be less than 50 gms, thereby demonstrating a strong *prima facie* case in favour of the applicant. Thereafter, the learned counsel for the applicant referred to the photographs at exhibit-E taken from the CCTV footage of the society where the flat is located. It was submitted that the photographs clearly show the officials of the NCB confronting the applicant on the said date at about 21:25 hours. It is submitted that if the contents of the *panchanama* are appreciated in this context, it becomes clear that the whole story of the team of the NCB having raided the flat of the applicant and found him in possession of the contraband is falsified. The *panchanama* itself records that the team of the NCB reached the concerned building at about 21:15 hours and that the *panchanama* was completed at about 23:00 hours on 26.08.2021.

6. It is the case of the applicant that the aforesaid material clearly demonstrates that the team of the NCB never reached the flat of the applicant and that the whole story depicted in the *panchanama* is

concocted. It is further submitted that the applicant was arrested on the same date i.e. 26.08.2021, thereby showing that he has remained behind bars for almost three years, which is an additional factor this Court ought to take into consideration, while appreciating the submissions made on behalf of the applicant.

7. The learned counsel for the applicant relied upon the orders dated 31.07.2024 and 01.08.2014 passed by this Court in Criminal Bail Application No.1006 of 2024 and Criminal Bail Application No.1575 of 2014 respectively. Reliance was also placed on judgement of the Supreme Court in the case of *Sarija Banu and another Vs. State through Inspector of Police*, **2004 (12) SCC 266**, to contend that the CCTV footage can be taken into consideration at this stage itself by the Court while considering the application for bail. On this basis, it is prayed that this Court may allow the present application.

8. On the other hand, the learned special counsel appearing for respondent No.1 - NCB submitted that in the present case, the applicant can make submissions only in respect of the CCTV footage and photographs in the light of the limited liberty granted to the applicant in terms of the order dated 09.11.2023 passed in Criminal Bail Application No.3474 of 2022. It is further submitted that the Special Court in the present case correctly appreciated that the original CCTV footage has not been produced and the applicant is relying merely on the photographs allegedly taken from the CCTV footage recorded on the date when the raid was conducted. It was submitted that manipulation of the date and time cannot be ruled out and that in any case, verification of the date and time settings would be a matter for trial.

9. It is submitted that the argument concerning only 52 gms Mephedrone having been recovered from the applicant cannot be considered by this Court in the light of the fact that two earlier bail

applications of the applicant were dismissed on merits by the Special Court.

10. This Court has considered the rival submissions in the light of the material available on record. Much emphasis has been placed on the photographs at exhibit-E to contend that the entire story projected in the *panchanama* on 26.08.2021 is falsified. It is claimed that the team of the NCB never reached the flat of the applicant and that he was apprehended in the premises of the society on the ground floor itself and taken away.

11. This Court has considered the photographs at exhibit-E. They indeed appear to show the team of the NCB as also the applicant. The date in the photographs is recorded as 26.08.2021 and the time is between 20:45 and 21:27 hours. This Court is of the opinion that even if the said photographs, allegedly taken from the original CCTV footage of 26.08.2021, are to be taken into consideration, they merely show the applicant along with the team of the NCB. This Court is of the opinion that the authenticity of these photographs, particularly with regard to recording of date and time, would be a matter for trial. The photographs have been allegedly taken from the CCTV footage of the society, wherein the flat of the applicant is located. At this stage itself, this Court is not inclined to accept the authenticity of the said photographs allegedly taken from the CCTV footage, particularly concerning the date and time mentioned therein. Therefore, it cannot be said that a strong *prima facie* case is made out by the applicant in falsifying the contents of the *panchanama* placed on record. The Special Court, in the present case, has correctly held that the said photographs could also be showing that the applicant was eventually whisked away by the team of the NCB.

12. In such circumstances, reliance placed on behalf of the applicant on the said photographs cannot lead to any positive conclusions in favour of the applicant at this stage.

13. Reliance placed on the orders of this Court in Criminal Bail Application Nos.1006 of 2024 and 1575 of 2014 cannot take the case of the applicant any further, simply for the reason that the said orders were passed in the facts of those cases and it cannot be said that the relief having been granted to the applicants therein, must necessarily lead to the prayer in the present application, being positively considered by this Court.

14. The judgement of the Supreme Court in the case of **Sarija Banu and another Vs. State through Inspector of Police** (*supra*) is also rendered in its own facts and the contention raised on behalf of the appellants therein found favour with the Supreme Court as in the facts of that case, it was found that the case against the appellants therein was falsely foisted on them. In the facts of the present case, this Court is unable to reach such a finding only on the basis of the photographs placed at exhibit-E along with the present application.

15. As regards the contention raised on behalf of the applicant that only 52 gms of Mephedrone has been recovered and that the contraband was weighed along with the plastic pouch, a perusal of the *panchanama* does not indicate that a clear finding can be rendered regarding the contraband having been weighed along with the plastic pouch. Therefore, the said contention is also rejected.

16. The learned counsel for the applicant submitted that the Supreme Court and this Court have repeatedly held that the applicant, having undergone substantial period of incarceration, is a factor required to be taken into consideration while disposing of bail applications.

17. In the present case, the applicant has remained behind bars for about two years and ten months. The minimum sentence, in such cases, is ten years. The bail applications of the applicant have been dismissed

on merits earlier and the contentions now sought to be raised by relying upon the photographs allegedly taken from the CCTV footage have also not found favour with the Special Court and this Court. The trial can be expedited, but no case is made out for allowing the present application.

18. In view of the above, the application is dismissed and the trial is expedited. The Special Court is directed to make an endeavour to complete the trial within one year from today.

(MANISH PITALE, J.)

Minal Parab