

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.892 OF 2024**

Akbarali Anwarali Shaikh	...	Applicant
versus		
State of Maharashtra	...	Respondent

Ms. Ashwini Achari with Mr. Taraq Sayed, Ms. Tasleem Shaikh, for Applicant.
Mrs. Mahalaxmi Ganapathy, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 13 AUGUST 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant who is arranged in C.R.No.31 of 2023 registered with Anti Narcotic Cell for the offences punishable under Sections 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, seeks to be enlarged on bail.
3. On 19 April 2023, Anti Narcotic Cell Police were on patrolling duty. At jail Road, Dongri (E), Mumbai, Kurban Shaikh (A1) and the applicant (A2) were found moving in a suspicious circumstance. The applicant and co-accused were accosted. In the personal search of Kurban Shaikh (A1), a transparent plastic pouch containing Mephedrone (MD) was found. The contraband substance weighed 150 gms. In the search of the applicant (A2) also, 20 gms of

MD was found. The incriminating articles were seized. The Applicant and the co-accused made disclosure that they were engaged in the illicit drug trade in collaboration with Roma Arif Shaikh (A3). The applicant and the co-accused Kurban Shaikh (A1) were arrested. Subsequently, Roma Shaikh (A3) was also arrested, on 3 October 2023.

4. Learned Counsel for the Applicant submitted that Roma Shaikh (A3) has been released on bail by this Court by an order dated 29 April 2024. Though, the applicant does not claim absolute authority with Roma Shaikh (A3) as no contraband substance was recovered from the possession of Roma Shaikh (A3), yet the reasons recorded by this court in the matter of applicability of the provisions contained in Section 29 of the Act, bear upon the claim of the applicant for bail as well.

5. It was submitted that the prosecution primarily banks upon the CDR. However, the analysis of CDR does not indicate that there was any exchange of calls between the applicant and Kurban Shaikh (A1). Nor has the prosecution placed the transcript of the conversation on record. Therefore, on the basis of the fact that the applicant and Kurban Shaikh (A1) were apprehended together, the provisions contained in Section 29 of the Act, 1985, cannot be invoked.

6. Learned APP opposed the prayer for bail. It was submitted that the very fact that the applicant was found in the company of Kurban Shaikh (A1), who was found in possession of a commercial quantity of MD is sufficient to indicate that the applicant was equally complicit in the illicit drug trade. Thus, the applicant does not deserve to be enlarged on bail.

7. Indisputably, in the personal search of the applicant, 20 gms MD was found. The applicant was, thus, found in possession of an intermediate quantity of the contraband substance. The interdict contained in Section 37(1)(b) of the Act, 1985 may not be attracted unless it could be shown that the applicant was accused of the offences involving commercial quantity. As noted above, in addition to the factum of possession of the contraband substance while being in the company of Kurban Shaikh (A1), the prosecution has banked upon the CDR to show that the applicant and the co-accused were part of a drug cartel. However, the analysis of the CDR (pages 150-151) does not indicate that any calls were exchanged between the applicant and Kurban Shaikh (A1), who was found in possession of the commercial quantity. There is no material to show that there were any financial transactions between the applicant and co-accused Kurban Shaikh (A1).

8. Reliance placed by the learned Counsel for the Applicant on the decision of the Supreme Court in the case of **Bharat Chaudhary V/s. Union of India**¹ appears to be well founded. In the said case, the Supreme Court held, inter alia, that the reliance on printouts of Whatsapp messages downloaded from the mobile phone and devices seized from the office premises of A4 cannot be treated as sufficient material to establish a live link between A4 and A1 to A3 when even as per the prosecution, scientific reports in respect of the said devices were still awaited.

9. In the case at hand, there are no calls between the applicant and Kurban Shaikh (A1), much less any transcript of the conversation. Therefore, the said circumstance cannot be arrayed against the applicant.

10. The seizure panchanama records that the applicant and the co-accused Kurban Shaikh (A1) were found moving in suspicious circumstance. They were apprehended together. In the search of Kurban Shaikh (A1), 150 gms of MD was found. Whereas, in the search of the applicant, 20 gms MD was found.

11. The endeavour of the prosecution to persuade the Court to take into account the aggregate quantity of the contraband substance found in possession of Kurban Shaikh (A1) and the applicant (A2) would have carried some

1 2021 SCC Online SC 1235

substance, if there was some independent material to demonstrate the criminal conspiracy. In the absence of such material, whether a charge of criminal conspiracy under Section 29 of the Act, can be said to have been made out on the premise that the applicant and co-accused (A1) were collectively found in possession of the contraband substance, exceeding the commercial quantity, though the applicant was found in possession of an intermediate quantity of 20 gms only, appears debatable.

12. The Court is informed that the applicant has no antecedents. The applicant has been in custody since 20 April 2023. Having regard to the large pendency of cases, it is unlikely that the trial can be concluded within a reasonable period.

13. For the foregoing reasons, I am inclined to hold that, prima facie, the interdict contained in Section 37(1)(b)(ii) of the Act, may not be attracted. I am, therefore, inclined to exercise discretion in favour of the applicant.

14. Hence, the following order :

ORDER

- (i) The Application stands allowed.
- (ii) The Applicant – Akbarali Anwarali Shaikh be released on bail in C.R.No.31 of 2023 registered with Anti Narcotic Cell, 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.

(iii) The applicant shall mark his presence before Anti Narcotic Cell, 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.

(iv) 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.

(v) 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.

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

(vii) 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.)