

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 946 OF 2024

Mukhtar Israr Ahmed Ansari

...Applicant

Versus

The State of Maharashtra

...Respondent

SHRIKANT
SHRINIVAS
MALANI

- Mr. Swapnil Patil i/b Patil Associates, for Applicant.
- Mr. Babu Vitthalrao Holambe-Patil, APP for Respondent.
- Mr. Salunke, API, Malvani Police Station, present.

CORAM : MANISH PITALE, J.

DATE : 16th July, 2024.

P. C. :

1. Heard, Mr. Swapnil Patil, learned counsel for the applicant and Mr. Babu Holambe-Patil, learned APP for the State.

2. The applicant in this case is seeking bail in connection with First Information Report No.1093 of 2023, dated 23rd August, 2023, registered at Police Station Malvani, District Mumbai, for the offences under Section 8(c) read with 22(b) of the Narcotic Drugs and Psychotropic Substances Act.

3. The applicant was arrested on the very day of the incident and he has remained behind bars since then.

4. The learned counsel for the applicant submits that in the present case, the applicant was apprehended with non-commercial quantity of contraband i.e. 20 grams of Mephedrone. It is submitted that there is

divergence in the very story of the prosecution, for the reason that at one place it is claimed that this was a matter of chance recovery while on the other hand it is stated by the panchas that the applicant was apprehending on the basis of information. It is further submitted that in the present case mandatory requirement of Section 52(A) of the NDPS Act was not complied with. As regards criminal antecedents, it is submitted that the applicant was found in possession of non-commercial quantity in most of the cases, except in one case where he was found to be in possession of commercial quantity of *Ganja*. It is further submitted that this Court may impose stringent conditions while granting bail to the applicant.

5. The learned APP submits that in the present case, the applicant was indeed apprehended while he was possessing 20 grams of Mephedrone. It is submitted that the application was moved before the Magistrate under Section 52(A) of the NDPS Act within reasonable time. The C.A. report is awaited. It is further submitted that the applicant has as many as 9 criminal antecedents and from the year 2014 onwards, he has been found to be in possession of contraband, thereby indicating that he does not deserve any indulgence from this Court.

6. It is submitted that in this case the prosecution intends to examine only about 9 witnesses and therefore, this Court may consider

expediting the trial.

7. This Court is of the opinion that although the applicant is found to be in possession of non-commercial quantity of 20 grams of Mephedrone in the present case, he has a record of having been prosecuted for similar offences from the year 2014 onwards. The list of cases brought to the notice of this Court indicates that he is a habitual offender.

8. As regards non compliance of Section 52A of the NDPS Act, this Court finds that the application was moved after a period of one month before the Magistrate. Although the judgment of the Supreme Court in the case of Union of India Vs. Mohanlal & Anr.¹, indicates that such application for sampling and certification ought to be moved without undue delay before the Magistrate under Section 52A of the NDPS Act, in the very same judgment, it is observed that there can be no room for prescribing or reading a time frame in the provision for moving such an application. Hence, it would be a matter for trial in the facts of the present case, as to whether the application moved before the Magistrate after about a month could be said to be fatal for the prosecution.

9. In the light of the above, this Court is not inclined to allow the present application. However, appropriate directions can be issued to ensure

¹ (2016) 3 SCC 379

that the trial is concluded within a reasonable period of time.

10. In view of the above, the application is dismissed. The Court of Special Judge (N.D.P.S.), City Civil and Sessions Court, Greater Bombay (C.R. No.44), is directed to frame charges in the present case within six weeks from today. The trial shall be completed as expeditiously as possible and in any case, within 9 Months from today.

11. In the event the trial is not completed within the stipulated period of time and the delay is not attributable to the applicant, liberty is reserved for the applicant to renew his prayer for bail.

(MANISH PITALE, J.)