

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1100 OF 2024**

Imran Aslam Pathan

... Applicant

versus

The State of Maharashtra

... Respondent

Mr. Atul Sarpande with Mr. Nilesh Bangar, Mr. Vikas Chawan, Mr. Kamlesh Satre, for Applicant.

Ms. Mahalaxmi Ganpathy, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 25 JUNE 2024

P.C.

1. The applicant, who is arraigned in C.R.No.172 of 2023 registered with Navghar Police Station for the offences punishable under Sections 420, 354, 468, 471 of the Indian Penal Code and Sections 22(c), 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, has preferred this application to enlarge him on bail.

2. The gravamen of indictment against the applicant and the co-accused is that on 15 August 2023, specific information was received at Anti-Narcotic Cell, Mumbai that Sahil Ramzan Ali Khan @ Massa (A1), Sarfaraz Shabbirali Khan (A7), and Ali Javed Jafar Mirza (A12) were indulging in trafficking in drugs in hugh quantity through their associates Shamsuddin, Imran – applicant herein, Mohd. Tausif, Ismail and others and on that day between 11.30 p.m. to 12.00 midnight, they were to arrive in one blue Ertiga Car bearing No.MH-04/KF-1514 and another Creta Car bearing

No.MH-04/JZ-2772 to sell mephedrone near Anand Nagar Toll Naka, Mulund, Mumbai. A surveillance was conducted.

3. At 12.05 a.m. on 16 August 2023, as informed, blue Ertiga Car bearing No.MH-04/KF-1514, came on the southern flank of Thane Mumbai Road. The car was intercepted. Imran Pathan – Applicant was allegedly at the wheel of the said car. Co-accused Sahil Ramzan Ali, Mohammad Ajmal Kasam Shaikh, Shamsuddin Shah, Mohammad Tausif Shaukat Ali and Mohammad Ismail Salim alighted from the said car. They were accosted. It is alleged, each of them was apprised of their right to be searched before the Gazetted Officer or Magistrate. As they declined to avail the said right, personal search was conducted in the presence of the panch witnesses. In the search of Sahil Khan (A1), 62 gms of MD was recovered. From the possession of Mohd. Ajmal Kasam Shaikh (A2) 54 gms of MD, Shamshuddin Shah (A3) 31 gms of charas, Mohd. Tausif Shaukat Ali (A5) 14 gms of MD, and Mohd. Ismail (A6) 18 gms MD was recovered. In the search of the applicant, 20 gms of MD was recovered.

4. Creta Car bearing No. MH-04/JZ-2772 was also intercepted. Sarfaraz Khan (A7), Priyanka Karkour (A9), Mohd. Shakil Khan and Bambaiya Hussain alighted from the said car. In the search of Sarfaraz (A7), 58 gms MD and Priyanka(A9) 14 gms MD was recovered. Contraband articles were seized.

5. Investigation revealed that Sahil Ramzan Ali Khan (A1) was running a drug cartel. Kaynaat Sahil Khan (A10) and wife of A1 was also involved in the supply

and sale of the drugs. Sahil Ramzan Ali Khan (A1) and Kaynaat Sahil Khan (A10) and co-accused were accepting money in cash and by way of credit into their bank accounts. Sahil (A1) and Kaynaat (A10) had acquired a number of immovable properties and had jewellery and amounts in their bank accounts, which appeared to be the proceeds of illicit drug trade.

6. The applicant came to be arrested on 16 August 2023. As the learned Special Judge declined to exercise discretion in favour of the applicant, this application for bail.

7. Mr. Atul Sarpande, learned Counsel for the Applicant, submitted that though the prosecution claimed to have recovered 20 gms MD from the possession of the Applicant Imran, yet the CA report belies the prosecution. It indicates that the sample of contraband substance allegedly recovered from the applicant and other co-accused contained ketamine and not MD. Only 20 gms ketamine was found in possession of the applicant. Even if the entire contraband recovered from the various persons in the said raid is considered in aggregate, not more than 300 gms of MD, ketamine and Charas was found in their possession.

8. Learned Counsel for the Applicant further submitted that there is no material to invoke Section 29 of the Act, 1985. Neither there were financial transactions between the applicant and the co-accused, nor the call data record has any incriminating tendency, nor the applicant has antecedents which disentitle him from

claiming bail. Therefore, the applicant having not been found in possession of the commercial quantity of the alleged contraband substance, the interdict contained in Section 37 of the Act, does not come into play. Hence, the applicant be enlarged on bail.

9. As against this, learned APP submitted that the applicant cannot draw any mileage from the fact that only 20 gms of Ketamine was recovered from the possession of the applicant. It was submitted that the applicant was driving the said car in which co-accused were carrying varying quantity of contraband substance. All the co-accused were travelling together. The applicant is very much a part of the syndicate which indulged in trading in contraband with impunity. In the totality of the circumstances, according to the learned APP, a charge under Section 29 of the Act, 1985 is, prima facie, made out. Thus, the applicant does not deserve to be enlarged on bail.

10. Learned APP invited attention of the Court to the observations in BA No.3312 of 2023 dated 10 March 2024 whereby the application of co-accused Kaynaat Sahil Khan came to be rejected. It was submitted that the applicant was, in fact, apprehended with contraband substance, which was not the case with Kaynaat Sahil Khan (A10).

11. The seizure panchanama indicates that the applicant was allegedly found in possession of 20 gms of MD. Bulk was seized as Exhibit D. Samples were drawn

and forwarded to FSL as Exhibit D-1. FSL reported that Ketamine was detected in the sample Exhibit D-1.

12. At this stage, it is necessary to note that under the Notification issued by the Central Government, small quantity of ketamine is 10 gms and commercial quantity 500 gms. The thrust of the submission of Mr. Sarpande was that the applicant having been found in possession of only 20 gms ketamine, the rigour contained in Section 37 of the Act, 1985 will not be attracted. It was further urged that there is no material to rope in the applicant by invoking the provisions contained in Section 29 of the Act.

13. As noted above, the material on record indicates that varying quantity of contraband substance were recovered from each of the accused, who were apprehended. Sahil (A1) was found in possession of 62 gms, Mohd. Ajmal Kasam Shaikh, 54 gms of MD, and rest of the accused were also found in possession of contraband substance, though it did not exceed the commercial quantity. The prosecution alleges, over 350 gms of MD/ketamine/charas was recovered from the applicant and the co-accused.

14. In the aforesaid scenario, I find substance in the submission of the learned APP that the entirety of the circumstances is required to be looked into and not only the quantity of the contraband found in possession of the applicant. There was specific information. Cars were intercepted based on such specific information.

The applicant was at the wheel of the car. The applicant and co-accused were all found travelling together. In all, 350 gms and above contraband substance was recovered from the applicant and co-accused. In such circumstance, an inference of the applicant being privy to the crime can be legitimately drawn.

15. While rejecting the bail application of Kaynaat Sahil Khan (A10), wife of Sahil (A1), who had been allegedly running the drug cartel, this Court found that there were numerous transactions involving huge amounts in the accounts of Kaynaat (A10). Apart from accused No.1 – husband of Kaynaat (A10), other co-accused and absconding accused had also transferred huge amount over a period of time into the accounts of Kaynaat. Prima facie, it appeared that the proceeds of illicit drug trafficking had been converted into immovable properties and jewelleries. Sahil (A1), appeared to be the kingpin of the drug cartel and Sahil (A1) and Kaynaat (A10) prima facie amassed huge wealth out of the illegal trafficking in drugs.

16. It is pertinent to note that though no contraband was found in possession of Kaynaat (A10), this Court was dissuaded from granting bail to Kaynaat (A10) as the evidence, prima facie, lent support to the prosecution case that Kaynaat (A10) was privy to the conspiracy. 20 gms Ketamine has been seized from the possession of the applicant, which is more than small quantity. The applicant was travelling together with the co-accused at the dead of the night. Almost each of the occupants of the car was carrying some or other contraband substance. It would be difficult to accede to

the submission of the learned Counsel for the Applicant that the applicant being the driver of the car was unaware of the fact that rest of the members who were travelling with him, were carrying the drugs.

17. I find substance in the submission of the learned APP that, in a case of the present nature, the cumulative effect of the search and seizure is required to be taken into account. Since more than 350 gms of contraband substance was found in possession of the applicant and the co-accused, the interdict contained in Section 29 of the Act, comes into play.

18. A useful reference in this context can be made to the judgment of the Supreme Court in the case of **Union of India through Narcotics Control Bureau, Lucknow V/s. Md. Nawaz Khan**¹ wherein the Supreme Court interfered with the order passed by the High Court granting bail to a accused where no contraband was found in possession of the accused therein, as there was concomitant circumstances which attracted the rigours of Section 37 of the Act, 1985. The observations in paragraphs 34 to 36 read as under :

“34. The following circumstances are crucial to assessing whether the High Court has correctly evaluated the application for bail, having regard to the provisions of Section 37:

34.1 The respondent was travelling in the vehicle all the way from Dimapur in Nagaland to Rampur in Uttar Pradesh with the co-accused;

34.2 The complaint notes that the CDR analysis of the mobile number used by the respondent indicates that the respondent was in regular

1 (2021) 10 SCC 100

touch with the other accused persons who were known to him;

34.3 The quantity of contraband found in the vehicle is of a commercial quantity; and

34.4 The contraband was concealed in the vehicle in which the respondent was travelling with the co-accused.

35. The impugned order of the High Court, apart from observing that no contraband was found from the personal search of the respondent has ignored the above circumstances. The High Court has merely observed that : Mohd. Nawaz Khan Case², SCC Online all para 10 :

“10 In view of the above, the twin conditions contained under Section 37(1)(b) of the NDPS Act stand satisfied. This Court is of the view that if there is reasonable ground, the applicant is entitled to be released on bail.”

36. The High Court has clearly overlooked crucial requirements and glossed over the circumstances which were material to the issue as to whether a case for the grant of bail was established. In failing to do so, the order of the High Court becomes unsustainable. Moreover, it has emerged, during the course of the hearing that after the respondent was enlarged on bail he has consistently remained away from the criminal trial resulting in the issuance of a non-bailable warrant against him. The High Court ought to have given due weight to the seriousness and gravity of the crime which it has failed to do.”

19. In any event, the Court does not have the assurance that the applicant will not indulge in identical offences if released on bail, as the applicant is alleged to be a member of the drug syndicate run by Sahil (A1) and Kaynaat (A10). The twin conditions under Section 37 of the Act, 1985, thus, cannot be said to have been fulfilled.

2 2020 SCC Online All 1838

20. Resultantly, the application deserves to be rejected.
21. Hence, the following order :

ORDER

- (i) The Application stands rejected.
- (ii) 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.)