

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

BAIL APPLICATION NO. 1589 OF 2024

Jahangir Abdul Rehman Shaikh	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Shreerat Kamath a/w Puja Yadav for the Applicant.
Mr. Tanveer G. Kha, APP for Respondent-State.
Mr. S. D. Patil, P.S., Shivaji Nagar Police Station, Mumbai.

CORAM: MANISH PITALE, J.
DATE : 26th JUNE 2024

P.C. :

1. Heard learned counsel for the applicant and learned APP for respondent-State.

2. The applicant before this Court is one of the two accused persons against whom FIR No. 667 of 2023 dated 30th July 2023 has been registered in Shivaji Nagar Police Station, Mumbai, for offences under Sections 8(c) read with 22(c) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. According to the prosecution, the applicant along with the co-accused persons were apprehended with contraband mephedrone at the time of the incident. The applicant was arrested on the very same date i.e. 30th July 2023 and since then he has remained behind bars.

4. The learned counsel for the applicant advanced a number of

arguments in support of the present application, including a contention that even as per the prosecution, the applicant was found with only 15 grams of mephedrone, which is intermediate quantity; the co-accused was found with 50 grams of mephedrone, but there is no material to show conspiracy between the two accused persons under Section 29 of the NDPS Act to rope in the applicant; and that a perusal of the inventory *panchnama* would show that while the samples were collected before the Magistrate and placed in two envelopes of *khaki* colour and labeled as ‘क-१ and क-२’, in the letter forwarding the envelopes containing the alleged contraband, sent by the PSI of the Police Station to the Police Inspector (Store Room), it was recorded that the envelopes labelled as ‘क-१ and क-२’ containing the contraband were of green colour. This discrepancy, according to the learned counsel for the applicant, completely vitiates the collection and forwarding of samples and the same must inure to the benefit of the applicant and it is further submitted that the applicant does not have any antecedents and this factor may also be taken into consideration.

5. The learned APP opposed the prayer in the present application, contending that the Call Data Records (CDR) of the accused persons i.e. the applicant, the co-accused who was found on the spot and accused No.5 who is said to be a supplier of the contraband, show that they were constantly in touch with each, in order to invoke Section 29 of the NDPS Act. It was submitted that the difference in the colour of the envelopes in which the samples

of the contraband were transported can be a typographical error.

6. This Court is of the opinion that the contention raised on behalf of the applicant with regard to the colour of the envelopes as recorded in the inventory *panchnama* and compared with the letter dated 5th October 2023 sent by the Police Sub-Inspector of the Police Station to the Police Inspector (Store Room), does make out a *prima facie* case in favour of the applicant. A perusal of the inventory *panchnama* shows that the samples were collected before the Magistrate and placed in two envelopes labelled ‘क-१ and क-२’, specifically recording that the envelopes were of *khaki* colour, but in the aforesaid letter dated 5th October 2023, alongwith which the samples were forwarded to the Police Inspector (Store Room), it is recorded that the samples were sent in two envelopes labelled as ‘क-१ and क-२’, which were green in colour. This, *prima facie*, appears to be a glaring discrepancy that goes to the root of the matter. In a similar situation, this Court in the case of *Zadi Elayee Sande & Anr. v/s. The State of Maharashtra* (Order dated 4th October 2022 passed in Bail Application No. 2796 of 2021) held in favour of the applicant and granted bail on the ground that this was an inconsistency which should inure to the benefit of the applicant/accused.

7. Apart from this, in the present case, even as per the prosecution, at the time of the incident, the applicant was found in possession of 15 grams of mephedrone, which is admittedly an intermediate quantity. The applicant does not have any criminal

antecedents and he has remained behind bars since 30th July 2023. Hence, this Court is inclined to allow the present application.

8. 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.667 of 2023 dated 30th July 2023 registered with Shivaji Nagar Police Station, Mumbai, on furnishing P.R. Bond of Rs.50,000/- and one or two sureties in the like amount.

(b) The applicant shall report to the Shivaji Nagar Police Station, Mumbai, on first Monday of each month between 10:00 a.m. and 12:00 noon, during the pendency of the trial. The applicant shall attend the trial Court on each and every date, unless specifically exempted by the trial Court.

(c) The applicant shall not indulge in any activity similar to the one on the basis of which the subject FIR has been registered against him.

(d) The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses or any other person concerned with the case.

(e) The applicant, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and residential address with updates in case of any change.

9. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

10. The application is disposed of.

MANISH PITALE, J.

BIPIN DHARMENDER
PRITHIANI

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Date: 2024.06.26 18:19:08 +0530