

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1592 OF 2024

Dilshad Fazlu Shaikh	...	Applicant
Vs.		
State of Maharashtra	...	Respondent

WITH
INTERIM APPLICATION NO.4216 OF 2024
IN
BAIL APPLICATION NO.3843 OF 2024

Mr. Himanshu Shivajirao Shinde for Applicant
Mr. Bapu V. Holambe Patil, APP for Respondent-State
Ms. P. N. Ingle, ASI, Jogeshwari Police Station

CORAM : MANISH PITALE, J.
DATE : NOVEMBER 19, 2024

P.C. :

1. Heard Mr. Shinde, learned counsel for the applicant and Mr. Holambe Patil, learned APP for State.

2. The applicant is seeking bail as he was arrested on 10.04.2021 in connection with FIR No. 16 of 2021 dated 10.04.2021 registered at Jogeshwari Police Station, District- Mumbai, for offences under Sections 8(c) and 22 of the Narcotic Drugs And Psychotropic Substances, Act, 1985 (NDPS Act).

3. The allegation against the applicant is that he was found in possession of contraband-Nitrazepam Tablets IP, Nitravet-10 and Welcyrex Cough Syrup containing mixture of codeine phosphate I.P. 10 mg.

4. The learned counsel for the applicant submits that the applicant has a strong case on merits as there is violation of Sections 50 and 52A

of the NDPS Act, even if the material filed along with the charge-sheet is to be taken into consideration. He submits that as the mandatory requirement of the NDPS Act have not been satisfied, this Court may consider allowing the present application. It is submitted that although there are some cases under the Indian Penal Code registered against the applicant, there is no other case registered under the NDPS Act.

5. The learned APP submits that the contentions raised on behalf of the applicant are all matters of trial and this Court may consider expediting the trial, instead of allowing this application.

6. This Court has considered the documents on record in order to analyze the contentions raised on behalf of the applicant. It is specifically alleged that Section 50 of the NDPS Act has been violated. Perusal of the documents on record shows that search of the applicant was undertaken by a police constable instead of Gazetted Officer or Magistrate, which *prima facie* violates Section 50 of the NDPS Act.

7. The Panchanama executed on 10.04.2021 shows that the samples of the contraband were prepared and labeled as अ-१ and अ-२ the letter forwarding the samples for chemical analysis dated 04.06.2021 shows that these very samples prepared at the time of seizure were sent for chemical analysis. There is nothing on record that the mandatory requirement under Section 52A of preparing the inventory panchanama and sampling before the Magistrate was ever undertaken.

8. The Supreme Court in the case of *Union of India Vs. Mohanlal and Another* (2016) 3 Supreme Court cases 379, in paragraph 14 to 19 thereof has laid down that procedure under Section 52A of the Act is mandatorily required to be followed. Since there is absence of material to show the procedure having been undertaken in the present case, a strong *prima facie* case is indeed made out in favour of the applicant.

9. Although the applicant appears to have some criminal antecedents, as far as NDPS Act is concerned, there are no other case registered against him. In these circumstances, this Court is satisfied that the stringent twin test required to be satisfied under Section 37 of the NDPS Act are indeed satisfied by applicant. He has remained incarcerated for a period of about 3 years and 7 months and therefore, this Court is inclined to allow the application.

10. In view of the above, the application is allowed in the following terms:-

- (A) The applicant shall be released on bail in connection with F.I.R. No. 16 of 2021 dated 10.04.2021 registered at Jogeshwari Police Station, District- Mumbai on furnishing P.R. Bond of Rs.50,000/- and one or two sureties in the like amount;
- (B) The applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant, witnesses or any other person concerned with the case;
- (C) The applicant shall cooperate with the proceedings before the trial Court and he shall attend each and every date, unless specifically exempted by the trial Court;
- (D) The applicant shall report to Jogeshwari Police Station on the first Monday of every month during the pendency of the trial.
- (E) Upon being released on bail, within two weeks, the applicant shall communicate the details of his contact number and residential address to the trial Court.

11. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It

is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

12. The application is disposed of.

(MANISH PITALE, J.)

Ajit Pathrikar