

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

BAIL APPLICATION NO. 1660 OF 2024

Santosh @ Ganesh Balasaheb Adke

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Anvroop Chakravarty a/w Mr. Priyyanshu S. Mishra, for Applicant.
- Mr. Sagar R. Agarkar, APP for Respondent.
- Mr. Sachin Patil, API, ATS Juhu Unit, Mumbai.

CORAM : MANISH PITALE, J.

DATE : 18th OCTOBER, 2024.

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P. C. :

1. Heard, Mr. Chakravarty, learned counsel for the applicant and Mr. Agarkar, learned APP for the respondent – State.

2. The applicant in the present case was arrested on 07.12.2019, in connection with First Information Report No.11 of 2019, registered at Police Station ATS Kalachowki, District Mumbai, for offences under Sections 8(c), 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. On information being received, the applicant and the co-accused person were apprehended and the contraband i.e. Mephedrone (MD) was found in their possession. They were arrested. The investigation was undertaken and on its completion charge-sheet was filed. The applicant has remained behind bars since the date of his arrest, i.e. for a period of almost 5

years. The charges are yet to be framed.

4. The learned counsel for the applicant submits that in the present case, there are 70 witnesses shown in the list of witnesses alongwith the charge-sheet and the charges are yet to be framed, thereby indicating that the trial may not even commence in the foreseeable future and there is no possibility of the trial being completed within a reasonable period of time. It is further submitted that the mandatory exercise required to be carried out under Section 52A of the NDPS Act, has not been carried out as per law and therefore, this aspect also goes to the very root of the matter. On this basis, it was submitted that this Court may consider enlarging the applicant on bail.

5. On the other hand, the learned APP submits that if appropriate directions are issued, the trial could be expedited, particularly in the light of the huge quantity about 12 kilos of the Mephedrone recovered from the person and the factory of the applicant. As regards the exercise required to be carried out under Section 52 A of the NDPS Act, attention of this Court is invited to the documents on record to show that such exercise was carried out on 02.08.2021 and it cannot be said that there is total non-compliance of the aforesaid provision.

6. This Court has perused the documents on record. In the case of

*Union of India Vs. Mohanlal and another*¹, the Supreme Court while dealing with the aspect of seizure and sampling in paragraph Nos.14 to 19, has deliberated upon the mandatory nature of the exercise required to be carried out under Section 52A of the NDPS Act. It is laid down that such an exercise is the mandate of law and that it has to be strictly complied with. It is further observed in paragraph No.19 of the said judgment that such an exercise is to be carried out within reasonable period of time.

7. The said position of law clarified that the mandatory exercise is necessary to ensure the purity of the process of seizure, sampling and forwarding of such samples for analysis to the concerned laboratory.

8. The documents on record show that the contraband was seized on 07.12.2019, and samples were prepared at the time of seizure itself. There was no intervening exercise of executing an inventory *panchanama* and certification by the Magistrate, but, the samples were directly sent for chemical analysis to the concerned laboratory on 09.12.2019 itself. The chemical analysis report was prepared by the concerned laboratory on 15.05.2020. A perusal of the report shows that the date of receipt of the samples was 09.12.2019.

9. It appears that after a long period of time had lapsed, on

1 (2016) 3 SCC 379

02.08.2021, the inventory *panchanama* was executed and the necessary certification was obtained from the Magistrate under Section 52A of the NDPS Act. But, such an exercise *prima facie* could be said to be an exercise in futility, for the reason that by the time the exercise was undertaken, the samples prepared at the time of seizure were directly sent for chemical analysis and the laboratory had already submitted its report on 15.05.2020. This Court is convinced that the applicant has made out a strong *prima facie* case regarding violation of the mandate of law under Section 52A of the NDPS Act, thereby indicating that bail can be granted to the applicant on this ground itself.

10. In addition, the record shows that the applicant was arrested on 07.12.2019 and he has remained behind bars since then. Consequently, he has undergone incarceration for a period of about 5 years. The charges are yet to be framed and the list of witnesses shows that the prosecution intends to examine 70 witnesses. The learned counsel for the applicant is justified in contending that in such a situation, there is hardly any possibility of the trial being completed within a reasonable period of time. The Supreme Court as well as this Court in a number of judgments, have laid down that when there is no possibility of the trial being completed within a reasonable period of time and the accused under-trials have suffered incarceration for substantial period of time, Constitutional Courts must exercise their power to enlarge such

accused under-trials on bail.

11. 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.11 of 2019, registered at Police Station ATS Kalachowki, District Mumbai, on furnishing PR bond of ₹50,000/- with one or two sureties in the like amount to the satisfaction of the Trial Court.
- (B) The applicant shall report to the Police Station ATS Kalachowki, District Mumbai, on the First Monday of every month between 10.00 a.m. to 12.00 noon, during the pendency of the trial.
- (C) The applicant shall cooperate with the Investigating Officer.
- (D) The applicant shall attend the proceedings before the Trial Court on every date, except when exempted, for reasons to be recorded in writing.
- (E) The applicant shall not tamper with the evidence in any manner. He shall not influence the informant, witnesses or any other persons concerned with the case.
- (F) The applicant shall upon being released immediately

inform the Investigating Officer of his Contact numbers and residential address and update the same in case of any change.

12. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicants shall be liable to be cancelled.

13. It is made clear that the observations made in this order are limited to the question of grant of bail to the applicant and that the Trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

14. The application is disposed of.

(MANISH PITALE, J.)