

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1674 OF 2024

Jashim Javed Shaikh

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Kamlesh Satre a/w. Mr. Vikas Chawan and Mr. Nilesh Bangar,
for the Applicant.

Mr. A.A. Naik, APP, for the Respondent/State.

Mr. Shrikant Katkar, API, Bandra ANC present.

CORAM : N. J. JAMADAR, J.

DATE : JUNE 20, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant, who is arraigned in Special Case No. 237 of 2024 arising out of C.R. No. 70 of 2023 registered with ANC Bandra Unit, Mumbai for the offences punishable under Sections 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the Act of 1985), has preferred this application to enlarge him on bail.
3. On 2nd August 2023 at about 3.55 p.m., while ANC police were on patrolling duty at Mahim, one person was found moving suspiciously near Dilshad Restaurant. He was accosted. He identified himself as Mohd. Farooque Sarwaiya (A1), the co-accused. He was apprised of his right to be searched in the presence of a Gazetted Officer or Magistrate under Section 50 of the NDPS

Act, 1985. In the search of accused No. 1, small pouch was found. It contained Mephedrone, and weighed 30 gms. Accused No.1 disclosed that he had purchased the said contraband substance from another co-accused Mohd. Hanif Sarvaiya (A2). Mohd. Farooque Sarwaiya (A1) led the police party to the house of the Mohd. Hanif Sarvaiya (A2).

4. In the search of Mohd. Hanif (A2), a plastic pouch containing a substance was found in the pocket of his trouser. It weighed 30 gms. Mohd. Hanif (A2) disclosed that he had purchased the said contraband article from Farhan Shaikh @ Ferry (A5). Mohd. Hanif (A2) further disclosed that an associate of Farhan Shaikh (A5) was to come to deliver MD to him. Police party, thus, accosted the applicant/(A3), who had come to deliver MD. In the latter's personal search, 40 gm MD was recovered.

5. Pursuant to the disclosure made by the applicant (A3), the co-accused Saleeq Qureshi (A/4) and Farhan Shaikh (A5) were arrested. 25 gm MD was found in the possession of both Saleeq Qureshi(A4) and Farhan Shaikh (A5). The prosecution thus alleged that the applicant and the co-accused were the members of a drug cartel led by Farhan Shaikh (A5).

6. At the outset, the learned counsel for the applicant submits that all of the rest of the co-accused have been released on bail. The

applicant was allegedly in possession of 40 gms of MD. The applicant is similarly circumstanced. Therefore, he is also entitled to be enlarged on bail.

7. The learned APP fairly submits that the principle of parity applies.

8. While releasing Mohd. Hanif Sarvaiya (A2), at whose instance the applicant came to be allegedly apprehended when he came to deliver the contraband substance, this Court had observed, *inter alia*, as under:-

8] Prima facie, it appears that the applicant came to be implicated on the basis of the disclosure made by Mohd. Faruq Sarwaiya (accused No.1). There appears compliance of the provisions contained in section 50 of the Act. It also appears that the learned Magistrate has conducted an inventory and issued a certificate under section 52A(3) of the NDPS Act, 1985.

9] Since an intermediate quantity of the contraband has allegedly been recovered from the possession of the applicant, the aspect of applicability of the provisions contained in section 29 of the NDPS Act, 1985 may warrant consideration.”

9. The aforesaid reasons govern the case of the applicant for bail with equal force. The applicant came to be apprehended at the instance of Mohd Hanif(A2). The applicant was allegedly found in possession of intermediate quantity of MD. All the co-accused have already been released on bail. Principle of parity applies. The Court is not informed that the applicant has antecedents. Prima facie, the bar under section 37 of NDPS Act, 1985 may not be attracted.

10. I am, therefore, inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- (i) The Application stands allowed.
- (ii) The Applicant – Jashim Javed Shaikh be released on bail in C. R. No.70 of 2023 registered with ANC, Bandra Unit on furnishing a PR bond in the sum of Rs.1,00,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.
- (iii) The applicant shall mark his presence before ANC, Bandra Unit on first Monday of every month between 11 am to 1 pm for a period of two years or till the conclusion of the trial whichever is earlier.
- (iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.
- (v) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any

change.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) 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.)