

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1890 OF 2024

Ali Jawad Jafar Mirza

...Applicant

Versus

The State of Maharashtra

...Respondent

WITH

BAIL APPLICATION NO. 2075 OF 2024

Najbol Vajhool Hasan Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

WITH

BAIL APPLICATION NO. 2186 OF 2024

Nilofar Aftab Khan

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Taraq Syed a/w Ms. Tanvi Tapkire, Ms. Ashwini Achari, Mr. Ali Kazmi and Mr. Pranit Likhite i/b Ms. Tanvi Tapkire, for Applicant in BA/1890/2024.
- Mr. Dilip Mishra a/w Mr. Ayaz Khan and Ms. Zehra Charania i/b Ayaz Khan, for Applicant in BA/2075/2024.
- Mr. Shriganesh S. Sawalkar (Through V.C.) a/w Ms. Gayatri Yadav, for Applicant in BA/2186/2024.
- Ms. Megha S. Bajoria, APP for Respondent in BA/1890 and 2075/2024.
- Mr. Prasanna P. Malshe, APP for Respondent in BA/2186/2024.
- Mr. Suhas Kade, PSI, Sakinaka Police Station.

CORAM: MANISH PITALE, J.

DATE : 12th DECEMBER, 2024.

P. C. :

1. Heard learned counsel for the applicants and the learned APPs

for the respondent – State.

2. The applicants before this Court are accused No.1 (applicant in Bail Application No.2075 of 2024), accused No.2 (applicant in Bail Application No.2186 of 2024) and accused No.6 (applicant in Bail Application No.1890 of 2024). The accused No.1 was apprehended on 16th June, 2023, allegedly possessing 230 gms of Mephedrone (MD), which is commercial quantity. Accused No.2 was arrested on 24th June, 2023 and on **26th June, 2023**, during search of her premises 10 gms of the MD was recovered, which is intermediate quantity. Accused No. 6 was arrested on 04th December, 2023, but contraband was not recovered from his possession.

3. The learned counsel appearing for the applicants referred to the documents filed alongwith charge-sheet and it was submitted that insofar as accused Nos.2 and 6 are concerned, there is hardly any material to link them with the co-accused persons, much less accused No.1, who was apprehended from the spot. It is submitted that merely because there were some financial transactions with the co-accused persons cannot be a ground to indicate a *prima facie* case against the said accused persons. Further, discrepancies in the seizure *panchnama* and inventory *panchnama* were highlighted to demonstrate a *prima facie* case in favour of said accused persons.

4. As regards accused No.1, various grounds were raised, including a

specific ground that the packets that were packed and sealed upon completion of seizure *panchnama* show C.R. number type written on the same, which creates grave suspicion about the seizure of contraband from accused No.1, for the reason that the FIR was registered about six hours later on 17th June, 2023. It is further submitted that there is also discrepancy between the labeling of packets in the seizure *panchnama* as compared to the inventory *panchnama*, thereby indicating that the whole exercise carried out by the Investigating Officer can be said to be doubtful and suspicious.

5. The learned APPs, on the other hand, submitted that all the grounds raised on behalf of the applicants/accused persons would be a matter for trial and particularly in the context of applicant/accused No.1, who was found in possession of commercial quantity i.e. 230 gms of MD. It is submitted that the said applicant is required to satisfy the stringent twin test contemplated under Section 37 of Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and therefore, it cannot be said that he has made out any ground for being enlarged on bail.

6. Having considered the rival submissions in the light of the material placed on record, this Court is inclined to allow all the three applications.

7. As regards applicant/accused No.1 (applicant in Bail Application

No.2075 of 2024), this Court finds that seizure *panchnama* in the present case was executed between 19:40 hours to 20:40 hours on 16th June, 2023. It records the manner in which the applicant was apprehended with the aforesaid commercial quantity of contraband. It indeed bears the signatures of the panchas and the Investigating Officer, as also the applicant/accused No.1. But, it is crucial to note that the said *panchnama* records the manner in which contraband was put in a transparent plastic packet and then transferred into a Nylon bag, which in turn was then kept in a khaki packet. The same was closed and sealed in the presence of panchas. There is reference to the manner in which it was labeled at the time of execution of the *panchnama*. It is relevant to note that the photographs forming part of the charge-sheet demonstrate that the C.R. number i.e. C.R. No.624 of 2023, is typed written on the label affixed to the khaki packet. It is also relevant to note that the FIR i.e. bearing C.R. No.624 of 2023 itself was registered later, at 02:53 hours on 17th June, 2023. This aspect raises grave suspicion about the manner in which the contraband was allegedly seized and thereupon stored and sealed during execution of the aforesaid *panchnama* dated 16th June, 2023.

8. This Court in the cases of *Zaid Zahir Rana Vs. Union of India and another* (order dated 30th October, 2023, passed in Criminal Bail Application No.1486 of 2023), *Chand Riyaz Shaikh Vs. The Union of India and another* (order dated 13th July, 2023, passed in Bail Application No.3269

of 2022) and recent orders passed in cases of *Shabbir Usman Shaikh Vs. The Union of India and another* (order dated 13th August, 2024 passed in Bail Application No.731 of 2024) and *Mohd. Wasim Abdul Rehman Shaikh Vs. State of Maharashtra* (order dated 29th August, 2024 passed in Bail Application No.1077 of 2024) has held in favour of the accused, while granting bail in similar circumstances. It has been held that the aforesaid aspect goes to the root of the matter, as the purity and sanctity of the process of seizure, storage and sealing is required to be maintained. The aforesaid admitted facts, in the present case, do create a strong *prima facie* case in favour of the applicant/accused No.1.

9. There are other grounds also raised on behalf of the applicant, including the discrepancy observed in the labels affixed at the time of the seizure of contraband from various accused persons and the labels actually found when inventory *panchnama* was executed. It is also contended that while the seizure *panchnama* records that the contraband seized from accused No.1 was stored and transferred in a plastic packet, which was then kept in nylon bag and thereupon kept in khaki packet, which was seized, the inventory *panchnama* refers only to the transparent plastic packet, without any reference to the nylon bag. These are also aspects which indeed raise some suspicion with regard to the purity of the process, but since this Court is inclined to hold in favour of the applicant on the first ground pertaining to

C.R. number itself being typed written on the label affixed to the khaki packet, no further discussion on the other grounds is necessary. This Court is inclined to allow the application of accused No.1.

10. As regards applicant/accused No.2, the allegation is about recovery of 10 gms of MD, which is intermediate quantity and therefore, rigors of Section 37 of the NDPS Act would not apply. In any case, the record itself show that while the accused No.2 was arrested on 24th June, 2023, the contraband was allegedly recovered two days later from her premises and that too only 10 gms.

11. A perusal of the inventory *panchnama* executed on 10th August, 2023, when compared to the seizure of the aforesaid contraband on the premises of the applicant/accused No.2 would show while the seizure shows that the contraband was seized and stored with label अ affixed on the same, but, when the packet was opened during execution of the inventory *panchnama* before the Magistrate, it was taken out from a packet labeled क. This creates doubt about the manner in which the contraband was stored and produced before the Magistrate and this factor inures to the benefit of the applicant. The aspect of financial transactions between accused No.2 and accused No.3 are based on certain screen shots showing that amounts were transferred on a mobile app to the said applicant by accused No.3. There is

also reference to certain bank transactions indicating amounts being transferred to the said applicant. But, these transactions do not appear to be proximate in point of time to the seizure of the contraband from the said applicant. In any case, there does not appear to be further material to indicate that such transfer of amounts could be co-related to the supply of any contraband. Therefore, this Court is inclined to allow the aforesaid application also.

12. As regards applicant/accused No.6, it is an admitted position that there was no recovery of contraband from the said accused person. In that light, the said applicant is sought to be shown as involved in the present case on the basis of two financial transactions. These are again screen shots of mobile app showing that amounts of ₹ 20,00/- and 51,500/- were transferred by the accused No.3 in favour of the said applicant. It appears that, other than the said material, there is no clinching material to show that the said applicant could be said to be linked with the other accused persons. In any case, the said two financial transactions *prima facie* do not appear to be linked with any supply of contraband, as is being alleged against the said applicant. Hence, this Court is inclined to allow the said application also.

13. In view of the above, the applications are allowed in the following terms:

- (A) The applicants i.e. Ali Jawad Jafar Mirza in Bail Application No.1890 of 2024, Najbol Vajhool Hasan Shaikh in Bail Application No.2075 of 2024 and Nilofar Aftab Khan in Bail Application No.2186 of 2024, shall be released on bail in connection with FIR No.624 of 2023, dated 17th June, 2023, registered at Police Station Sakinaka Brihanmumbai, on furnishing PR bonds of ₹ 50,000/- each with one or two sureties each in the like amount, to the satisfaction of the Trial Court.
- (B) The applicants shall report to the Police Station Sakinaka, Brihanmumbai, on the First Monday of every month between 10.00 a.m. to 12.00 noon, during the pendency of the trial.
- (C) The applicants shall attend the proceedings before the Trial Court on every date, except when exempted, for reasons to be recorded in writing.
- (D) The applicants shall surrender their passports, if any, before the Trial Court within one week of being released on bail.
- (E) The applicants shall not tamper with the evidence in any manner. They shall not influence the informant, witnesses

or any other persons concerned with the case.

- (F) The applicants shall upon being released immediately inform the Investigating Officer of their Contact numbers and residential addresses and update the same in case of any change.

14. 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.

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

16.. The applications are disposed of.

(MANISH PITALE, J.)