

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2199 OF 2024

Hasin Kayum Khan

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Charanjit Penthalia, for Applicant.
- Ms. Megha S. Bajoria, APP for Respondent – State.

CORAM : MANISH PITALE, J.

DATE : 29th NOVEMBER, 2024.

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P. C. :

1. Heard learned counsel for the applicant and learned APP for the respondent-State.
2. The applicant was arrested on 06th January, 2023, in connection with First Information Report No.0007 of 2023, registered at Police Station Hill Line Police Station, District Thane, for offences under Sections 8 (c), 20(b) and 29 of the the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).
3. The applicant is seeking bail on the principle of parity, as the co-accused persons were granted bail by orders dated 08th October, 2024, passed in Bail Application No.1905 of 2024 (Ravi Munnalal Jaiswal Vs. The State of Maharashtra) and order dated 21st November, 2024 passed in Bail Application No.2815 of 2024 (Mohammed Sadab Riyaz Siddiki Vs. The State of

Maharashtra). It is submitted that in both the orders, this Court found that mandatory procedure under Section 52A of the NDPS Act was not followed and therefore, the applicants therein were entitled to be enlarged on bail.

4. The learned APP has unable to dispute that this application arises out of the same FIR and that in the present case the role of the applicant could not be said to be distinguishable from that of the co-accused persons.

5. While allowing the application of the co-accused person in the case of *Ravi Munnalal Jaiswal Vs. The State of Maharashtra* (supra), this Court observed as follows :

“6. In the present case, it cannot be said that the exercise under Section 52A of the NDPS Act was not carried out or that it suffered from delay, but the whole purpose of undertaking the mandatory exercise is to ensure the purity of the process of seizure and sampling and preparation of inventory panchanama, so that such samples, certified by the Magistrate, are forwarded to the laboratory for chemical analysis.

7. A perusal of the documents in the present case, shows that the seizure panchanama was executed and samples were prepared on the basis of which the FIR was registered on 6th January 2023 and the applicant, along with the other accused persons, was arrested. But, a perusal of the chemical analysis report dated 12th June 2023 shows that the samples for chemical analysis were received on 6th

January 2023 itself i.e. the date of the registration of the FIR. These were obviously the samples that were drawn during the seizure of the contraband. The mandatory exercise contemplated under Section 52A of the NDPS Act was carried out on 19th January 2023, when inventory panchanama was executed and the Magistrate issued the certificate.

8. *The certificate dated 19th January 2023 issued by the Magistrate itself records as follows :*

“ Out of seized article the police has taken 6 samples of 25 gms ech. Exhibited A1 & A2, B1 & B2, C1 & C2 out of other 6 Exhibit A & A2, B & B2, C & C2 is kept under central seized unit of Hill Line Police Station, Thane.”

9. *The above quoted portion of the certificate issued by the Magistrate clearly shows that the samples prepared at the time of seizure, were sent directly for chemical analysis to the laboratory without the intervening mandatory procedure of executing inventory panchanama and certification by the Magistrate. This clearly violates the mandate of the law laid down by the Supreme Court in the aforementioned judgment in the case of **Union of India V/s. Mohanlal & Anr.** (supra). Hence, the application has made out a strong prima facie case in his favour.*
10. *The applicant has satisfied the first limb of the stringent twin test contemplated under Section 37 of the NDPS Act. Since, the applicant does not have any criminal*

antecedents, the second limb is also satisfied and this Court is inclined to allow the application.”

6. The learned counsel for the applicant submits that the applicant herein also does not have any criminal antecedents. There is nothing brought to the notice of this Court to show that the applicant has any criminal antecedents and therefore, the applicant is indeed entitled for bail on the principle of parity and on having satisfied the twin test contemplated under Section 37 of the NDPS Act.

7. 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.0007of 2023, registered at Police Station Hill Line Police Station, District Thane, on furnishing P.R. 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 Hill Line Police Station, District Thane, on first Monday of every month between 10:00 a.m. and 12:00 noon, during the pendency of the trial.
- C) The applicant shall cooperate with the Trial Court for expeditious disposal of the trial. He shall attend the

proceedings before the Trial Court on each and every date, except when exempted for reasons to be recorded in writing.

- 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 active mobile numbers and his address and with updates in case of any change.

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

9. It is made clear that the observations made hereinabove in the present order are limited to disposing of the present bail application. The Trial Court shall proceed on merits in the present case without being influenced by the observations made hereinabove.

10. The application is disposed of.

(MANISH PITALE, J.)