

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

BAIL APPLICATION NO. 2252 OF 2024

Karan Santosh Tandalekar ... Applicant
Versus
The State of Maharashtra ... Respondent

**WITH
BAIL APPLICATION NO. 2260 OF 2024**

Yogesh Madhavsingh Mangroliya ... Applicant
Versus
The State of Maharashtra ... Respondent

Mr. Dilip Mishra a/w Mr. Ayaz, Ms. Zehra Charnia and Ms. Mallika Sharma for the Applicant in BA/2252/2024.

Mr. Kamlesh M. Satre for the Applicant in BA/2260/2024.

Mr. R. M. Pethe, APP for Respondent-State in BA/2252/2024.

Mr. Kiran C. Shinde, APP for Respondent-State in BA/2260/2024.

CORAM: MANISH PITALE, J.

DATE : 1st JULY 2024

P.C. :

. Heard learned counsel for the applicants and learned APP for respondent-State.

2. The applicants before this Court are accused Nos. 1 and 2 and they have approached this Court seeking bail in connection with FIR No. 41 of 2023 dated 3rd May 2023 registered at Anti Narcotic Cell, Kandivali Unit, Mumbai, for offences under Sections 8(c), 22(c) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). Both the applicants were

arrested on 3rd May 2023 and they have undergone incarceration for about one year and two months.

3. This Court has perused the material on record and in that backdrop, specific contentions raised on behalf of the applicants have been considered.

4. The documents filed along with the two applications bring out the following features.

(a) The FIR is registered on 3rd May 2023, when it is claimed that the applicants were confronted as they were found to be indulging in suspicious movements. It is alleged that upon their search in the presence of two *panchas*, contraband mephedrone was recovered from them. The names of *panchas* were not stated in the statement dated 3rd May 2023, leading to registration of FIR.

(b) The names of the *panchas* feature for the first time in the *panchanama*, which is stated to have been completed at 19:20 Hrs, while the FIR was registered at 21:35 Hrs. The FIR having been registered at later point of time, it is to be noted that names of the *panchas* ought to have been stated therein.

(c) The applicants were allegedly found to be individually in possession of 45 grams and 32 grams of mephedrone. These quantities are intermediate quantities as commercial quantities are 50 grams and above.

(d) In the seizure *panchanama*, it is recorded that white colour powder was recovered from the applicants, but the Chemical Analysis Report shows that brownish crystalline powder was received for chemical analysis.

(e) In the statement of the complainant, pertaining to both the applicants, it is recorded that the contraband found on the person of both the applicants was collected in packets and after sealing the packets, signatures of the API and two *panchas* were taken. There is no mention of about signatures of the accused/applicants having been taken on the said packets. Yet, in the photographs of the packets placed on record, concerning the proceedings under Section 52A of the NDPS Act, signatures of the accused/applicants are also shown to be affixed.

5. In support of the contention raised by the learned APP that the Call Detail Records (CDRs) of the applicants show that Section 29 of the NDPS Act can clearly be invoked, reliance is placed on such CDRs, copies of which are filed with Criminal Bail Application No. 2260 of 2024. Much emphasis is placed on the number of calls exchanged between the applicants i.e. accused Nos.1 and 2, also the accused No.3, who is alleged to be a supplier.

6. The above mentioned features, in the opinion of this Court, do give rise to a *prima facie* case in favour of the applicants to the

effect that there is a reasonable possibility that they may not be found guilty upon conclusion of trial. The above mentioned features *prima facie* show inherent inconsistencies in the case of the prosecution and therefore, this Court is inclined to hold in favour of the applicants.

7. Individually, the applicants are alleged to have been in possession of intermediate quantity of contraband. Other than CDRs showing exchange of calls between the applicants and accused No.3, there does not appear to be any substantial material for the prosecution to invoke Section 29 of the NDPS Act and to contend that the quantities of the contraband recovered from both the applicants ought to be taken into consideration cumulatively to hold that this is a case of commercial quantity.

8. Apart from this, it is brought to the notice of this Court that the applicants do not have any criminal antecedents and hence, the second requirement of Section 37 of the NDPS Act also appears to be satisfied by the applicants. Both the applicants have remained behind bars for about one year two months and therefore, this Court is inclined to hold in their favour.

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

- (a) The applicants i.e. Karan Santosh Tandalekar in Bail Application No.2252 of 2024 and Yogesh

Madhavsingh Mangroliya in Bail Application No.2260 of 2024, shall be released on bail in connection with FIR No.41 of 2023 dated 3rd May 2023 registered at Anti Narcotic Cell, Kandivali Unit, on furnishing PR Bond of Rs.50,000/- each and one or two sureties in the like amount, to the satisfaction of the trial Court.

(b) The applicants shall attend proceedings before the trial Court on every date, except when specifically exempted by the trial Court.

(c) The applicants shall not tamper with the evidence of the prosecution in any manner. They shall not influence the informant, witnesses or any other person concerned with the case.

(e) The applicants, upon being released on bail, shall place on record of the trial Court the details of their Contact Number and residential address with updates in case of any change.

10. 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. It is also clarified that the observations made in this order are limited to the disposal of the present bail applications. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

11. The applications are disposed of.

MANISH PITALE, J.