

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2305 OF 2024

Mohd. Farooque Iqbal Ansari @
Mohd. Farukh Ansari ... Applicant
Vs.
State of Maharashtra ... Respondent

Mr. Shreerat Kamath a/w. Ms. Puja Yadav for Applicant.
Mr. Balraj B. Kulkarni, APP for Respondent-State.
Ms. S. D. Patil, PSI, Shivaji Nagar Police Station, Mumbai.

CORAM : MANISH PITALE, J.
DATE : JULY 19, 2024

P.C. :

. Heard Mr. Kamath, learned counsel for the applicant and Mr.Kulkarni, learned APP for the respondent-State.

2. In this case, the applicant is seeking bail as he was arrested on 11.01.2023 for offences under Sections 8(c), 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered against him.

3. In this case, charge-sheet was filed upon conclusion of the investigation and the record shows that charge was framed on 13.10.2023. It appears that thereafter the trial has not progressed.

4. The learned counsel for the applicant submits that in the present case, mandatory requirement under Section 52-A of the NDPS Act has not been satisfied and that the law laid down by the Supreme Court in the case of *Union of India Vs. Mohan Lal*, (2016) 3 SCC 379 has not been complied with.

5. In order to support the aforesaid submission, the learned counsel

for the applicant referred to the documentary material on record, which shows that, while the samples were drawn on 11.01.2023, the inventory *panchanama* before the magistrate under Section 52-A of the NDPS Act was prepared on 19.07.2023. By placing reliance on the relevant portion of the aforesaid judgement of the Supreme Court, it was submitted that such gross delay on the part of the investigating authority is fatal to the prosecution case and hence on this ground alone, bail ought to be granted to the applicant. It is further submitted that when the bail application of the applicant was rejected before the Sessions Court in September 2023, it was indicated that charge would be framed on the next date of listing. In fact, charge was framed on 13.10.2023 and thereafter, there is absolutely no progress in the trial and on this ground also, this Court may consider enlarging the applicant on bail.

6. It is further submitted that in the present case, the applicant was alleged to have been in possession of contraband Codeine and that 19 bottles containing the said contraband were found in a box under the driver's seat of the taxi of which the applicant was the taxi driver. It is submitted that the entire story of the prosecution is not supported by the material on record.

7. On the other hand, learned APP has invited attention of this Court to the document at page 132 of the bail application, showing that the investigating officer had moved the competent magistrate on 16.01.2023 itself to comply with the requirement of Section 52-A of the NDPS Act. The charge-sheet records that when the court of the competent magistrate was approached, it was indicated that due to heavy workload, dates beyond two months were being allotted. It is submitted that in such a situation, there is substantial compliance with the requirement of the aforesaid provision and the law laid down by the Supreme Court in the case of **Union of India Vs. Mohan Lal** (*supra*). It is further submitted

that there are only 9 witnesses to be examined in the present case and this Court may expedite the trial.

8. This Court has considered the rival submissions in the light of the material placed on record. The Supreme Court in the case of **Union of India Vs. Mohan Lal** (*supra*), while considering the requirements of Section 52-A of the NDPS Act under the heading ‘seizure and sampling’, observed that the scheme under Section 52-A of the said Act does not brook any delay in the matter of making of an application or the drawing of samples and certification. In fact, the Supreme Court has observed that such an exercise should be carried out without undue delay.

9. This Court is of the opinion that the material on record, in the present case, indicates that while the applicant was apprehended with contraband on 11.01.2023, the investigating officer immediately moved application on 16.01.2023 to comply with the requirements of Section 52-A of the NDPS Act. The charge-sheet records that the dates being allotted by the competent magistrate were beyond two months. It has also come on record that midway through the process, the officer in-charge of the investigation had to be changed because the earlier officer had moved to the anti-terrorist squad. It is in this backdrop that, eventually, inventory *panchanama* was prepared on 19.07.2023.

10. This Court is of the opinion that the application having been moved by the investigating officer on 16.01.2023 before the competent magistrate does indicate alacrity on the part of the officer and what happened subsequent thereto, cannot be a ground for the applicant to claim relief in the present application.

11. As regards the slow pace of trial, this Court finds that the charge, in the present case, was already framed on 13.10.2023. It appears that

thereafter, the trial has not proceeded further and there is nothing to indicate that the delay is on the part of the applicant.

12. The material on record also shows that only 9 witnesses are to be examined by the prosecution and that the trial can certainly be completed in a time bound manner.

13. In view of the above, the application is dismissed. However, the Special Court is directed to expedite the trial and to complete the same, in any case, within nine months from today.

14. Needless to say that if the trial is not completed within the stipulated period of time and the delay is not attributable to the applicant, liberty is reserved to the applicant to renew his prayer for bail.

(MANISH PITALE, J.)

Minal Parab