

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.129 OF 2024

Jabbar Abdul Sattar Khan ... Applicant

Vs.

State of Maharashtra ... Respondent

WITH
BAIL APPLICATION NO.2567 OF 2024

Fakrullah Aamir Badshah Shaikh ... Applicant

Vs.

State of Maharashtra ... Respondent

WITH
BAIL APPLICATION NO.3281 OF 2024

Rizwan Rehmat Khan ... Applicant

Vs.

State of Maharashtra ... Respondent

Mr. Atul Sarpande a/w. Mr. Nilesh Bankar for Applicant in BA/129/2024.

Mr. Ayaz Khan a/w. Mr. Dilip Mishra, Ms. Zehra Charania and Ms. Mallika Sharma for Applicant in BA/2567/2024.

Mr. Kamlesh Satre a/w. Mr. Nilesh Bangar for Applicant in BA/3281/2024.

Mr. Kiran C. Shinde, APP for Respondent-State in BA/129/2024.

Mr. Tanveer G. Khan, APP for Respondent-State in BA/2567/2024.

Mr. R. M. Pethe, APP for Respondent-State in BA/3281/2024.

Mr. R. V. Londhe, API, ANC, Ghatkopar Crime Branch, Mumbai.

CORAM : MANISH PITALE, J.

DATE : AUGUST 09, 2024

P.C. :

1. Heard learned counsel for the applicants and learned APPs for the respondent-State.

2. The applicants, in the present case, are seeking bail as they were arrested on 27.04.2021 i.e. on the date of registration of FIR. The applicants are facing prosecution for offences under Section 8(c), 22(c)

and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). The applicants have suffered incarceration for about three years and four months.

3. The learned counsel for the applicants submit that in the present case, the investigating authority has not complied with mandatory requirement of Section 52-A of the NDPS Act, and therefore, the entire case of the prosecution can be said to be vitiated. Reliance is placed on judgement of the Supreme Court in the case of *Union of India Vs. Mohanlal and another*, **(2016) 3 SCC 379**. It is further submitted that except the applicant - Jabbar Abdul Sattar Khan, the other two applicants do not have any criminal antecedents and even the said applicant has only one criminal antecedent in respect of which, he has already been enlarged on bail. It is submitted that although the charge is framed, only two witnesses have been examined.

4. The learned APPs have referred to the material on record, but they are unable to demonstrate as to whether mandatory procedure contemplated under Section 52-A of the NDPS Act was satisfied. There is nothing to show that an appropriate application, as contemplated under the said provision, was moved before the competent Magistrate.

5. The Supreme Court in the case of **Union of India Vs. Mohanlal and another** (*supra*), while considering the aspect of seizure and sampling, held in paragraphs 15 to 19 that the procedure under Section 52-A of the NDPS Act, concerning sampling and certification is mandatory. The Supreme Court took note of the Standing Order issued by the Central Government and found that the Standing Order, which did not prescribe such a procedure, was in conflict with the statutory provision and therefore, only the statutory provision would prevail. Thus, it is obvious that the procedure contemplated under the aforesaid provision is mandatorily required to be satisfied.

6. In the present case, the material on record shows that such a procedure was not followed. Hence, the applicants have made out a *prima facie* case in their favour to claim that the prosecution case can be said to be vitiated. The stringent twin test contemplated under Section 37 of the NDPS Act is thus satisfied by the applicants, and therefore, this Court is inclined to allow the applications. Even otherwise, the applicants have undergone incarceration as under-trials for about three years and four months and this factor is also taken into consideration in these applications.

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

- (A) The applicants shall be released on bail in the context of NDPS Special Case No.1254 of 2021 arising out of FIR No.39 of 2021 dated 27.04.2021 registered with Anti-Narcotics Cell, Ghatkopar Unit, Mumbai, on furnishing P.R. Bond of Rs.50,000/- [Rupees Fifty Thousand only] each with one or two sureties in the like amount to the satisfaction of the trial Court;
- (B) The applicants shall cooperate with the trial Court for expeditious trial and they shall attend each and every date, unless exempted for reasons to be recorded in writing;
- (C) The applicants shall not tamper with the evidence of the prosecution. They shall not influence the informant, witnesses or any other person concerned with the case;
- (D) The applicants shall surrender their passports, if any, with the trial Court;
- (E) Upon being released on bail, the applicants shall immediately, and in any case within a week, furnish the details of their active mobile numbers and residential

addresses to the trial Court and update the same in case of any change.

8. Needless to say, violation of any of the aforesaid conditions would make the applicants liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicants in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

9. Bail applications are disposed of.

(MANISH PITALE, J.)

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