

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

BAIL APPLICATION NO. 2606 OF 2024

Shamshad Hussain Shafi Ansari	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Ashraf Khan a/w Mohd. Saquib Shaikh, Rafid Shaikh and Sneha S. for the Applicant.

Mr. Prasanna P. Malshe, APP for Respondent-State.

Mr. Ahire, PSI, Kurla Police Station.

Mr. Sandip S. Ghule, Jailor No.1, Mumbai Central Prisons.

CORAM: MANISH PITALE, J.
DATE : 28th NOVEMBER 2024

P.C. :

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

2. The applicant has approached this Court seeking bail as he was arrested on 3rd May 2023 in connection with C.R. No. 59 of 2023 registered at Kurla Police Station, Mumbai, for offences under Sections 8(c), 21(c), 20(b)ii(a) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. The allegation in the present case concerns contraband *charas* and mephedrone (MD). It is alleged that *charas* weighing 82.25 grams and MD weighing 102.5 grams were seized in the present case, both being commercial quantities.

4. Upon completion of investigation, charge-sheet was filed and the applicant has remained in judicial custody since 3rd May 2023.

5. The learned counsel for the applicant referred to the documents filed along with the charge-sheet and he submitted that the *panchanama* in the present case executed on 2nd May 2023, refers to the contraband being seized and placed in *pista* coloured packet, while the inventory *panchanama* executed on 13th June 2023 shows that the contraband was taken out before the Magistrate from *khaki* coloured packet. It is submitted that this discrepancy goes to the root of the matter and raises a serious doubt about the contraband allegedly seized at the time of execution of the *panchanama* on 2nd May 2023 being the very contraband placed before the Magistrate during execution of inventory *panchanama* under Section 52A of the NDPS Act.

6. Another discrepancy highlighted on behalf of the applicant was that while the inventory *panchanama* dated 13th June 2023 recorded before the Magistrate showed that it was executed between 13:30 hours and 13:45 hours, the photographs appended thereto, which were allegedly taken on the personal mobile phone of one of the Police personnel, were clicked between 15:09 hours and 16:27 hours, thereby indicating that there was serious doubt about the veracity and genuineness of the entire exercise conducted under Section 52A of the NDPS Act. It was submitted that such samples were then forwarded to the chemical analyzer,

calling for a report. By highlighting the aforesaid discrepancies, it was submitted that the applicant has made out a strong *prima facie* case in his favour and since he has no criminal antecedents, the applicant has satisfied the second limb of the twin test contemplated under Section 37 of the NDPS Act.

7. On the other hand, the learned APP submitted that all the mandatory procedures prescribed under the NDPS Act and Rules were scrupulously followed in the present case. It was submitted that the grounds raised on behalf of the applicant, could be a matter for trial, but no relief can be granted in the present application.

8. This Court has considered the rival submissions. There can be no doubt about the fact that object of the NDPS Act is to ensure that use of prohibited substances and contraband is effectively checked and those indulging in such activities, are apprehended and proportionately punished. The provisions of the NDPS Act provide for substantial powers with the Police personnel and the Investigating Authority, but at the same time, the mandatory procedures prescribed under the said Act need to be followed, so that the possibility of false implication is ruled out. It is for this reason that Courts have been strictly applying the mandatory provisions of the NDPS Act, even while considering the bail applications moved by accused under-trials, who are facing prosecution under the provisions of the NDPS Act.

9. In this backdrop, when the specific contentions raised on behalf of the applicant are considered, this Court finds substance in the said contentions. The record shows that while the *panchanama* executed on 2nd May 2023, specifically recorded that the contraband was seized and stored in *pista* coloured packet, when the inventory *panchanama* was executed subsequently on 13th June 2023 before the Magistrate, it was recorded that the contraband was taken out from *khaki* coloured packet. This raises a *prima facie* case in favour of the applicant because a serious doubt is raised, as to whether the material allegedly seized in the present case was the very material that was produced before the Magistrate while executing the inventory *panchanama*.

10. The learned counsel for the applicant is justified in relying upon order dated 4th October 2022 passed by this Court in Bail Application No. 2796 of 2021 in case of *Zadi Elayee Sande & Anr. v/s. The State of Maharashtra*, wherein this Court, in similar circumstances, found that such a discrepancy goes to the root of the matter and it must inure to the benefit of the applicant seeking bail.

11. Apart from this, the other discrepancy pointed on behalf of the applicant also shows that the application deserves to be enlarged on bail. The record shows that the inventory *panchanama* before the Magistrate under Section 52A of the NDPS Act was executed on 13th June 2023 between 13:30 hours to 13:45 hours. It was specifically recorded in paragraph 7 of the *panchanama* that

while the same was being executed, photographs of the process were taken in the personal mobile phone of one of the Police personnel. The photographs appended to the inventory *panchanama* executed before the Magistrate shows that they were clicked between 15:09 hours to 16:27 hours. *Prima facie*, this appears to be a discrepancy because the entire inventory *panchanama* is recorded to have been completed at 13:45 hours itself. It is relevant to note that the photographs show that while the contraband was weighed, it was shown to have been taken out of the packet and weighed in the open. This gives rise to serious apprehension about the genuineness and veracity of the procedure undertaken in the present case under Section 52A of the NDPS Act. *Prima facie*, it also vitiates the process of sending such samples certified by the Magistrate to the chemical analyzer for chemical analysis.

12. The applicant has made out a case on merits and he satisfies the first limb of the twin test contemplated under Section 37 of the NDPS Act. Since, the applicant does not have any criminal antecedents, the second limb also stands satisfied and the present application deserves to be allowed.

13. In view of the above, the application is allowed in the following terms:

- (a) The applicant shall be released on bail in connection with C.R. No. 59 of 2023 registered at Kurla Police

Station, Mumbai, on furnishing P.R. Bond of Rs. 50,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

- (b) The applicant shall report to the Kurla Police Station, Mumbai, 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 trial and he shall attend each and every date, unless exempted by the trial Court, 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 Contact Number and residential address with updates in case of any change.

14. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant 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 application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

15. The application is disposed of.

MANISH PITALE, J.