

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2781 OF 2024

Afzal Ajamiya Sayyed	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Ms. Sumaiya Khan, i/b. Mr. Tahir Hussain for applicant.

Mr. Sagar R. Agarkar, APP for respondent-State.

CORAM : MANISH PITALE, J.
DATE : 07th OCTOBER, 2024

P.C. :

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

2. The applicant was arrested on 20.03.2022 in connection with FIR No.29 of 2022 dated 20.03.2022 registered with Anti-Narcotics Cell, Ghatkopar, Mumbai, for offences under Sections 8(c), 22(b), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. According to the investigating authority, the applicant was apprehended with light brown-coloured powder, stated to be contraband mephedrone (MD) and on that basis, he was arrested and proceeded against. The investigation was completed and chargesheet was filed. The applicant has remained behind bars since the date of his arrest.

4. The learned counsel for the applicant submitted that the applicant has a strong case on merits, as the case of the investigating authority can be said

to be vitiated for various reasons. Firstly, there is discrepancy in the weight of the contraband recorded during the course of seizure i.e. 52 grams, as compared to the weight of the contraband recorded during the inventory *panchanama* i.e. 53 grams. Secondly, the contraband was weighed alongwith the plastic bag in which it was kept, thereby showing that if the weight of the plastic bag is taken into account, the quantity of the contraband would fall below the commercial quantity. Thirdly, it was claimed that the inventory *panchanama* in the present case, was executed on 06.04.2022 and hence, it can be said to be delayed. Fourthly, it was submitted that after completion of procedure under Section 52A of the NDPS Act, the samples were sent for chemical analysis beyond the period of 72 hours and hence, it could be said that the entire procedure was vitiated. Reliance was placed on following orders of this Court:

- (i) Order dated 10.03.2023 passed in Bail Application No.2046 of 2022 (Mahesh Netraprasad Sharma vs. The State of Maharashtra);
- (ii) Order dated 15.09.2023 passed in Bail Application No.1646 of 2022 (Abdul Kadir Ghoghari vs. Union of India and another);
- (iii) Order dated 01.11.2023 passed in Bail Application No.291 of 2023 (Imtiyaz Sattar Shaikh vs. The State of Maharashtra);
- (iv) Order dated 28.08.2024 passed in Bail Application No.812 of 2024 (Rushikesh Shashikant Hadwale vs. The State of Maharashtra);

5. On the other hand, the learned APP submitted that the issues sought to be raised on behalf of the applicant are all matters for trial. It was submitted that the inventory *panchanama* in the present case was clearly executed within reasonable period of time and there is no question to claim that there was delay in execution of the same, in the context of Section 52A of the NDPS Act. It was submitted that there is no basis for the applicant to

claim that the samples ought to have been sent for chemical analysis within 72 hours of execution of the inventory *panchanama* and certification by the Magistrate. In the present case, the samples were sent for chemical analysis within 5 days of the inventory *panchanama* being executed, thereby demonstrating that the applicant has no case on merits.

6. This Court has considered the rival submissions in the light of the material available on record. The minor discrepancy of 1 gram in the weight of the contraband, as recorded at the time of seizure and at the time of execution of inventory *panchanama*, cannot be said to be a glaring error on the part of the investigating authority, justifying the claim of the applicant that the entire procedure was vitiated. There is no substance in the said contention raised on behalf of the applicant.

7. It is to be noted that in the context of Section 52A of the NDPS Act, the Supreme Court, in the case of *Union of India Vs. Mohanlal and another* [(2016) 3 SCC 379], has held that the exercise contemplated under the aforesaid provision, is to be carried out within a reasonable period of time. No specific time line is prescribed. In the present case, seizure *panchanama* was made on 20.03.2022 and inventory *panchanama* as also certification by the Magistrate was completed on 06.04.2022. This was within 3 weeks of the seizure and hence, it can be said to be within reasonable period of time. No case is made out by the applicant on that score also.

8. As regards the claim of the applicant that the contraband ought to have been sent for chemical analysis within 72 hours of execution of inventory *panchanama*, this Court does not find any statutory basis for making such a claim. In fact, the learned counsel for the applicant was

unable to justify such a claim made on behalf of the applicant. In any case, the inventory *panchanama* was executed on 06.04.2022 and the concerned laboratory received the samples for chemical analysis on 11.04.2022 i.e. within 5 days of execution of the inventory *panchanama*. Hence, the exercise was indeed carried out within reasonable period of time.

9. As regards inclusion of plastic pouch or bag while weighing the sample of the contraband, this Court is of the opinion that the question as to what could be the weight of the plastic bag and deduction of the same would bring the weight of the contraband below the commercial quantity, are aspects that would necessarily have to be gone into, at the stage of trial and on this ground, it cannot be said that the entire procedure is vitiated.

10. Section 37 of the NDPS Act imposes stringent twin test upon the applicant, which needs to be satisfied for the Court to grant bail. The applicant has failed to satisfy the first limb of the said twin test and hence, the application does not deserve to be allowed.

11. The application is dismissed.

12. On a prayer made on behalf of the applicant, the trial is expedited.

(MANISH PITALE, J)