

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3010 OF 2024**

Faizal Ali Mohammad Ali Memon	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Darshit Jain a/w. Aiqan Memon and Ms. Manjusha Nair for applicant.

Mr. Tanveer G. Khan, APP for respondent-State.

N. T. More, PSI, Pydhonie Police Station, Mumbai.

**CORAM : MANISH PITALE, J.
DATE : 09th SEPTEMBER, 2024**

P.C. :

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

2. The applicant seeks bail as he was arrested on 04.11.2023 in connection with FIR registered on same date, bearing No.129 of 2023 at Pydhonie Police Station, Mumbai for offences under sections 8(c), 20(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. The learned counsel for the applicant submits that in the present case, co-accused Nos.1 and 2 were alleged to have been found in possession of commercial quantity of contraband *charas*. It is submitted that merely on the statements of the co-accused Nos.1 and 2, it was claimed that the applicant had supplied the contraband. In this backdrop, section 29 of the NDPS Act has been invoked against the applicant and in support thereof, there are

certain call detail records (CDRs) upon which the investigating authority is placing reliance. It is submitted that such material is not enough to make out a *prima facie* case against the applicant. In fact, upon conducting search of the applicant and his premises, no contraband was recovered. It is further submitted that the applicant does not have criminal antecedents.

4. Reliance is placed on judgments of the Supreme Court in the cases of *Tofan Singh vs. State of Tamil Nadu* [(2021) 4 SCC 1] and *Balwinder Singh (Binda) vs. Narcotics Control Bureau* (2023 SCC OnLine SC 1213), as also the order passed by this Court in the case of *Roma Arif Shaikh vs. State of Maharashtra* (order dated 29.04.2024 passed in Bail Application No.4184 of 2023), in support of the contention raised on behalf of the applicant.

5. On the other hand, the learned APP submits that the judgments of the Supreme Court relied upon by the learned counsel for the applicants, would be relevant at the stage of trial, when the veracity of the evidence led on behalf of the prosecution, is tested. It is submitted that the statements of the co-accused Nos.1 and 2 led to the applicant in the present case, indicating that the chain of events clearly points out the involvement of the applicant. Commercial quantity of contraband has been recovered from the co-accused persons and merely because there is no recovery of contraband from the applicant, the same ought not to inure in favour of the applicant. Reliance is placed on CDRs, thereby showing that the applicant was in constant with the co-accused persons.

6. This Court has perused the material in the light of the rival submissions. The accused in cases under NDPS Act are required to satisfy stringent twin test, contemplated under Section 37 of the NDPS Act, for

being granted bail.

7. In the present case, the applicant is arraigned as accused on the statements of the co-accused Nos.1 and 2. The record shows that there is no recovery of contraband either from the person of the applicant or from his premises. It is also a matter of record that other than the CDRs, presently the investigating authority does not appear to have any other material to link the applicant with co-accused Nos.1 and 2.

8. There is no doubt that according to the investigating authority, commercial quantity of the contraband has been recovered from co-accused Nos.1 and 2. But, other than the statements of the co-accused persons and CDRs, there does not appear to be any other material to link the applicant with the present case.

9. There is substance in the contention raised on behalf of the applicant, by placing reliance on the judgments of the Supreme Court in the cases of **Tofan Singh vs. State of Tamil Nadu** (*supra*) and **Balwinder Singh (Binda) vs. Narcotics Control Bureau**(*supra*). It is relevant to note that in **Tofan Singh vs. State of Tamil Nadu** (*supra*), the Supreme Court has categorically held that confessional statements made to officers of the respondent department are inadmissible, as they are barred by Section 25 of the Evidence Act. In the present case, the investigating authority has not even claimed that there is confessional statement showing the involvement of the applicant. As regards the contention raised by the learned APP that the statements of the co-accused persons were recorded during the course of execution of *panchanama* and discovery in pursuance of such statement would certainly be relevant, suffice it to say that if at all the contraband was recovered from

the person or premises of the applicant, such a submission would have been relevant. In the present case, admittedly there is no recovery of the contraband, either from the person or premises of the applicant.

10. That leaves only the CDRs as the basis for linking the applicant with the offences in the present case. In the case of **Roma Arif Shaikh vs. State of Maharashtra** (*supra*), in a similar situation, this Court found that in the absence of transcript of the conversation or any other material to establish nexus between the applicant and the co-accused persons, CDRs in themselves could not be said to be enough to invoke section 29 of the NDPS Act. Therefore, this Court finds that the applicant has made out a case to satisfy the first limb of the stringent twin test, contemplated under section 37 of the NDPS Act. Since the applicant does not have any criminal antecedent, the second limb of the twin test is also satisfied, thereby indicating that the present application deserves to be allowed.

11. In view of the above, the application is allowed in the following terms:
- (i) The applicant shall be released on bail in connection with FIR No.129 of 2023 dated 04.11.2023 registered at Pydhonie Police Station, Mumbai, on furnishing PR Bond of ₹ 50,000/- and one or two sureties in the like amount to the satisfaction of the trial Court;
 - (ii) the applicants, upon being released on bail, shall report to Pydhonie Police Station, Mumbai on first Monday of each month between 10:00 a.m. and 12:00 noon during the pendency of trial;
 - (iii) upon release, within one week, the applicant shall inform the Investigating Officer as well as the trial court about his contact number and residential address and update the same in case of any change;

- (iv) the applicant shall co-operate with the trial Court in completing the proceedings expeditiously and attend the proceedings before the trial Court on each and every date, unless specifically exempted;
- (v) the applicant shall not tamper with the evidence of the prosecution in any manner. He shall not undertake any action that may influence the informant, witnesses and other persons concerned with the case.

12. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions are violated.

13. It is also clarified that the observations made in this order are limited to the disposal of the present bail application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

14. The application is disposed of.

(MANISH PITALE, J)