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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3042 OF 2024

Sayeed Sajjad Shaikh	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. Ayaz Khan i/b. Mr. S.P. Ingle, for the Applicant.
Mr. A.A. Naik, APP for the State.

CORAM: N.J.JAMADAR, J.

DATE : AUGUST 26, 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in C.R.No.172 of 2023 registered with Navghar Police Station for the offences punishable under Sections 420, 465, 468, 471 of the Indian Penal Code, Sections 22(c), 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, has preferred this application to enlarge him on bail.
3. The gravamen of indictment against the applicant and the co-accused is that on 15th August 2023, specific information was received at Anti-Narcotic Cell, Mumbai that Sahil Ramzan Ali Khan @ Massa (A1), Sarfaraz Shabbirali Khan (A7) and Ali Javad Jafar Mirza (A12) were indulging in trafficking in drugs in huge quantity through their associates Shamsuddin, Imran, Mohd. Tausif, Ismail and others and on

that day between 11.30 p.m. to 12.00 midnight, they were to arrive in one blue Ertiga Car bearing No.MH-04/KF-1514 and another Creta Car bearing No.MH-04/JZ-2772 to sell mephedrone near Anand Nagar Toll Naka, Mulund, Mumbai. After complying with the pre-requisites under the Act, 1985, police conducted a surveillance.

4. At 12.05 am on 16th August, 2023, as informed, blue Ertiga Car bearing No. MH-04-KF-1514, came on the south flank of Thane Mumbai Road. The car was intercepted. Co-accused Sahil Ramzan Ali, Mohammad Ajmal Kasam Shaikh, Shamsuddin Shah, Imran Pathan, Mohammad Tausif Shaukat Ali and Mohammad Ismail Salim alighted from the said car. They were accosted. Each of them was apprised of their right to be searched before the Gazetted Officer or Magistrate. As they declined, personal search was conducted in the presence of the panch witnesses. In the search of Sahil Khan (A1), 62 gms of MD was recovered. From the possession of Mohd. Ajmal Kasam Shaikh (A2) 54 gms of MD, Shamshuddin Shah (A3) 31 gms. of charas, Imran Pathan (A4) 20 gms of MD, Mohd. Tausif Shaukat Ali (A5) 14 gms of MD, and from Mohd. Ismail (A6) 18 gms MD was recovered.

5. Investigation revealed that the accused No. 1 was running a drug cartel. The accused made disclosure statements which revealed that Kaynaat Khan (A/10), wife of accused No. 1, was also involved in the

supply and sale of the drugs. Kaynaat Khan (A/10) came to be arrested on 23rd August, 2023.

6. During the course of investigation, on 26th August, 2023, Kaynaat Khan (A/10) made a disclosure statement to the effect, inter alia, that she used to purchase the contraband substance Mephedrone (MD) in the range of 5 kg., from the co-accused who were identified as Arafat Shaikh, a resident of Mumbra, Salman Batla, a resident of Pydhonie, and Sayeed Shaikh, a resident of Mira Road. The applicant is arraigned as the said Sayeed Shaikh who was named by co-accused Kaynaath Khan.(A/10). The latter further disclosed that the said contraband was thereafter delivered to the other co-accused for further sale.

7. Pursuant to the aforesaid disclosure statement, on 22nd November, 2023 the applicant Sayyed was apprehended from Borivali Railway Station, when he alighted from Train No. 09723. The applicant was taken to his residence at Sandstone Building No. 6, R.No. 1102, Kanakiya, Mira Road, Thane. The applicant was apprised of his right under section 50 of the NDPS Act, 1985. As the applicant declined to avail the said right, personal search of the applicant was conducted. In the search, a transparent plastic pouch containing white substance which appeared to be MD was found. It weighed 6.16 gm. Said substance was seized and sealed. The applicant came to be arrested.

8. Mr. Khan, learned counsel for the applicant, submitted that the applicant has been roped in on the basis of statement of co-accused after about three months of the alleged disclosure statement. The search and seizure is vitiated as the applicant was allegedly taken to his residence, which is far away from the place where the applicant was apprehended and at the said residence contraband substance was allegedly seized from the possession of the applicant. At any rate, the substance found in the possession of the applicant was only 6.16 gm. The C.A report has yet not been received. The substance found in the possession of the co-accused has turned out to be Ketamine. Even if the case of the prosecution is taken at par, the applicant can be said to have been found in possession of an intermediate quantity. There is no material to rope in the applicant as the confederate and to invoke the provisions contained in section 29 of the NDPS Act, 1985. Hence, the interdict contained in section 37(1)(b)(ii) of the NDPS Act, 1985 is not attracted. The applicant has no antecedents. Therefore, the applicant be enlarged on bail.

9. In opposition to this, Mr. Naik, learned APP, strongly opposed the prayer for bail. It was submitted that Kaynaat Khan (A/10) has specifically named the applicant as the person from whom she had procured huge quantity of MD and paid Lakhs of rupees. Therefore, the

interdict contained in section 37 of the NDPS Act, 1985 operates with full force and vigor. Mr. Naik made an endeavour to urge that the fact that only 6.6 gm MD, was recovered from the possession of the applicant cannot be considered in isolation. It was submitted that there is material to indicate that the applicant had purchased a number of mobile phone handsets and used to change mobile phones frequently so as to conceal the identity. The said circumstance, according to learned APP, incriminates the applicant squarely. To buttress this submission, Mr. Naik placed reliance on the statement of Amir Khan who deals in the business of sale of used mobile phone handsets and the transcript of WhatsApp conversation between the applicant and the said witness.

10. I have given careful consideration to the submissions canvassed across the bar.

11. Prima facie, the applicant has been implicated on the basis of disclosure statement made by Kaynaat Khan (A/10) wherein the applicant was stated to be one of the suppliers of the contraband substance, in bulk. The said disclosure statement was made on 26th August, 2023. Pursuant to the said disclosure statement, discovery of certain mobile phone numbers was allegedly made. Prima facie, the disclosure statement identifying the applicant as one of the persons who sold the contraband substance in bulk, does not seem to be distinctly

related to the fact thereby discovered. Secondly, it is trite the disclosure statement made by one accused is not a legal piece of evidence against non-maker co-accused. Thus, the aforesaid circumstance of disclosure statement made by Kaynaath Khan (A/10), to rope in the applicant as either supplier of the contraband substance or a confederate in the conspiracy appears tenuous.

12. As regards the prosecution case of seizure of the contraband substance from the possession of the applicant, it is necessary to note that, prima facie, the seizure does not appear to be free from infirmities. Incontrovertibly, the applicant was apprehended at Borivali Railway Station. The applicant was taken to his residence. Personal search of the applicant was allegedly conducted at his residence. It is not the case of the prosecution that search was conducted at Borivali Railway station. In the seizure panchanama, it is recorded that the police party reached the house of the applicant after about half an hour. In this view of the matter, the sanctity of search and seizure would be a matter for adjudication at the trial.

13. Evidently, there is a time lag between recovery of the contraband substance from the co-accused in the raid conducted on 16th August, 2023 and the arrest of the applicant. Prima facie, there does not appear any material to establish the nexus between the applicant and the

recovery of the contraband substance from the co-accused on 16th August, 2023.

14. The applicant is sought to be roped in on the basis of mobile phone numbers which were found in the mobile phone handset of co-accused Kaynaath Khan (A/10). Reliance is placed on the statement of the witness who was dealing in used mobile phone handsets. The said witness stated that the applicant used to frequently purchase the used mobile phone handsets from him. The nexus between the said act of purchase of mobile phone handsets and use thereof in the alleged trafficking in drugs, prima facie, appears to be a matter for evidence and trial. There is no material like transcript of the conversation between the applicant and the co-accused and/or money trail. In the absence thereof, it appears debatable where the applicant can be roped in for the offence punishable under sections 29 of the NDPS Act, 1985.

15. That leaves the aspect of recovery of 6.6 gm MD from the possession of the applicant. If the applicant is to be prosecuted on the said count alone, the said quantity being an intermediate quantity, the interdict contained in section 37 of the NDPS Act, 1985 may not operate. The Court is not informed that the applicant has antecedents.

16. I am, therefore, inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant be released on bail in C.R.No.172 of 2023 registered with Navghar Police Station, on furnishing a P.R. Bond of Rs. 1,00,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at Navghar police station on the first Monday of every alternate month between 11 am to 1 pm till conclusion of the trial.
- 4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.
- 5] The applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.
- 6] The applicant shall regularly attend the proceedings before the jurisdictional Court.
- 7] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of

opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N.J.JAMADAR, J.)