

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3145 OF 2024

Irfan Badar Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

- Ms. Sana Raees Khan a/w Mr. Aditya Parmar, for Applicant.
- Mr. A.M. Chimalkar, Special Public Prosecutor a/w Ms. Aishwarya Sharma for Respondent – State.
- API – R.D. Mote, ATS Vikhroli Unit.

CORAM : MANISH PITALE, J.

DATE : 20th August, 2024.

P. C. :

1. Heard, Ms. Khan, learned Counsel appearing for the applicant and Mr. Chimalkar, learned Special Public Prosecutor appearing for the respondent – State.

2. The applicant is seeking bail in connection with Crime No.06 of 2019, registered with ATS Kalachowki, Mumbai, dated 10.09.2019 for offences under Sections 8(c) read with Section 22 and 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (NDPS Act) and presently pending as NDPS Special Case No.374 of 2020.

3. The applicant in the present case was arrested on 10.09.2019 i.e. the date of registration of the FIR.

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4. At the outset, the learned counsel appearing for the applicant submits that 6 co-accused persons were granted bail by order dated 05.08.2024, passed by this Court, primarily on the ground of non compliance of mandatory requirement of Section 52A of the NDPS Act. The applicant in this application seeks parity.

5. The learned SPP is unable to distinguish the case of the present applicant from that of the co-accused persons, who were granted bail by order dated 05.08.2024. It is relevant to note that the said co-accused persons had also suffered incarceration for the similar period of almost 5 years and the said factor was also taken into consideration by this Court while enlarging them on bail.

6. It is a settled position of law in terms of the judgment of the Supreme Court in the case of *Union of India Vs. Mohanlal and another*¹, particularly paragraph Nos.15 to 19 thereof, that compliance with requirement of Section 52A of the NDPS Act is mandatory. In paragraph No.19 of the said judgment, the Supreme Court has considered the question as to the manner in which such an application is to be moved by the Investigating Authority before the Competent Magistrate under Section 52A of the said Act and the time frame that governs such an application. The Supreme Court has held that although the scheme of the Act in general and Section 52-A thereof in

1 (2016) 3 SCC 379

particular does not indicate any time frame, but at the same time it does not brook any delay in the matter of making of an application or drawing up of samples and certification before the Magistrate. In fact, it is observed that such an application is to be moved within a reasonable period of time and “without any undue delay or procrastination.”

7. In the present case, as noted in the order date 05.08.2024, passed in the applications filed by the co-accused persons, initially an application for sampling and certification was preferred in June, 2021, before the Tahsildar, which was placed before the Naib-Tahsildar, who is not even the Competent Authority. Eventually, the application was moved before the Competent Magistrate on 22.12.2022 i.e. after delay of more than 3 years.

8. The only justification given for such delay was that at the relevant time the standing order of the Central Government was in vogue and subsequently on 23.12.2022, the State of Maharashtra issued appropriate guidelines in the light of the law laid down by the Supreme Court in the case of **Union of India Vs. Mohanlal and another** (*supra*). The said contention cannot be accepted because in paragraph no.18 of the said judgment, it was clarified by the Supreme Court that if there is conflict between a statutory provision and an executive instruction like a standing order, the statutory provision (in this case Section 52A of the NDPS Act) would prevail.

9. It is also an admitted position that the applicant has remained behind bars since 10.09.2019 and suffered incarceration for about 5 years. This is also a relevant factor while considering the present application.

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

- (A) The applicant shall be released on bail in connection with NDPS Case No.374 of 2020 arising from FIR No.6 of 2019 registered at ATS Kalachowki, Mumbai dated 10.09.2019, Mumbai, on furnishing P.R. Bond of Rs.50,000/- [Rupees Fifty Thousand only] with one or two sureties in the like amount to the satisfaction of the trial Court;
- (B) The applicant shall cooperate with the trial Court for expeditious trial and he shall attend each and every date, unless exempted for reasons to be recorded in writing;
- (C) The applicant shall report to ATS, Kalachowki on the first Monday of every month between 10:00 a.m. and 12:00 noon, during the pendency of the trial;
- (D) The applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant,

witnesses or any other person concerned with the case;

(E) The applicant shall surrender his passport, if any, with the Trial Court;

(F) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile numbers and residential addresses to the Trial Court and update about the same, if there is any change.

11. 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.

12. The application is disposed of.

(MANISH PITALE, J.)