

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

CRIMINAL BAIL APPLICATION NO. 3327 OF 2024

Sharukh Kadar Shaikh

...Applicant/
Accused No.3

Versus

State Of Maharashtra

...Respondent

Mr. Gopal Singh a/w Mr. Vikas Tiwari for the Applicant.

Mr.Niteen Patil, APP for the Respondent – State.

CORAM : N. J. JAMADAR, J.
DATE : 29th AUGUST 2024

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PC.:

1. Heard the learned Counsel for the Applicant and the learned APP for State.

2. The Applicant (Accused No.3), who is arraigned in Special Case No. 927 of 2024 arising out of Special LAC/C.R. No.383 of 2023 registered with Ghatkopar Police Station, Mumbai for the offences punishable under Sections 8(c) read with 22(C), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act, 1985) has preferred this application to enlarge him on bail.

3. On 10th November 2023, pursuant to an information that two persons (whose features were described) would arrive near Dattaji Salvi Ground, Barvenagar, Bhatwadi, Ghatkopar (West), Mumbai,

between 6:00 to 7:00 pm the police mounted a surveillance. At about 06:55 p.m., one person, whose features matched with the description furnished by the informant, allegedly came near parking area of the said ground. He was carrying a black bag. His movements appeared suspicious. After a while another person, whose features also matched with the description furnished by the informant, came thereat and joined the first person. Those persons were accosted. They identified themselves as Shafi Zahir Shaikh (A1) and Sultan @ Sartaj Inayat Khan (A2). They were appraised of their right under Section 50 of the NDPS Act, 1985. As they declined to avail the said right, search was conducted. In the search of Shafi Zahir Shaikh (A1), 60 grams mephedrone (M.D.) was found. In the search of Sultan @ Sartaj Inayat Khan (A2) also 20 gms mephedrone (M.D.) was found. The contraband articles were seized and sealed.

4. During the course of investigation, it transpired that Sultan @ Sartaj Inayat Khan (A2) had chats with Sharukh Shaikh (A3). The investigation revealed that, the Applicant was the supplier of the contraband substance to Shafi Shaikh (A1) and Sultan Khan (A2).

5. The Applicant came to be arrested on 22nd December 2023. The Applicant made a disclosure statement on 25th December 2023 leading to recovery of 4 gram M.D. from his house, situated at Solapur Estate, Doshi Chamber, Wadibandar, Mumbai. Post completion on investigation, charge-sheet came to be lodged against the Applicant and the co-accused, for offences punishable under Sections 22(c) and 29 of the NDPS Act, 1985.

6. Mr. Singh, the learned Counsel for the Applicant, submitted that there is no nexus between the recovery of the contraband substance from Shafi Shaikh (A1) and Sultan Khan (A2), on 10th November 2023, and the Applicant. The latter has been roped in on the basis of the transcript of the Whats-app chat between the Applicant and the co-accused Sultan Khan (A2), which does not even remotely relate to illicit trafficking in drugs. Attention of the Court was invited to the transcript of the Whats-app chats (page 46) and the screen shots (page 50 and 51).

7. It was further submitted that the recovery of 4 grams mephedrone (M.D.) pursuant to discovery allegedly made by the Applicant is also fraught with infirmities. The said discovery was effected on 25th December 2023, after about one and half months

of the arrest of the co-accused with the contraband substance. In substance, there is no material to implicate the Applicant by invoking Section 29 of the NDPS Act, 1985.

8. Mr.Naik, the learned APP, resisted the prayer for bail. It was submitted that, the Applicant had made a disclosure statement leading to the recovery of 4 grams M.D. In the said disclosure statement the Applicant stated that, he was the supplier of the contraband substance to the co-accused. Since the co-accused were found in possession commercial quantity of M.D., the interdict contained in Section 37(1)(b)(ii) of the NDPS Act, 1985, comes into play and, therefore, the Applicant does not deserve to be released on bail.

9. I have carefully considered the material on record and the submissions canvassed across the bar. Evidently, the Applicant was not found in the company of the co-accused from whose possession contraband substance, exceeding the commercial quantity, was recovered. The quantity of mephedrone (M.D.) allegedly recovered pursuant to the discovery made by the Applicant was 4 grams only. Thus, the interdict contained in Section 37 of the NDPS Act can come into play, if it could be demonstrated that the Applicant was a

confederate in the conspiracy to engage in the illicit drug trade.

10. I find substance in the submission of learned Counsel for the Applicant that, the primary material, on the strength of which the Applicant is sought to be roped in, is the transcript of the WhatsApp chat between the Applicant and Sultan @ Sartaj Inayat Khan (A2). *Prima facie*, the said conversation appears to be rather innocuous. In the said conversation, there is no reference, even remotely, about the illicit drug trade.

11. The disclosure statement allegedly made by the Applicant *prima facie* does not distinctly relate to the facts thereby discovered. Apart from the screen shots *prima facie* there is no other material to establish the nexus between the Applicant and the co-accused. Nor there is any material to show any financial transactions between the Applicant and the co-accused. Whether the alleged transcript of the whatsapp chats between the Applicant and the co-accused is sufficient to establish the nexus between the Applicant and the co-accused thus appears to be a matter for adjudication at the trial.

12. In the aforesaid view of the matter and having regard to the fact that the contraband allegedly found in the possession of the

Applicant is of intermediate quantity, and the Applicant has no antecedents, I am impelled to hold that the interdict contained in Section 37 of the NDPS Act, 1985, may not be attracted.

13. The Applicant is a young boy of 25 years. The Applicant is in custody since 22nd December 2023. Having regard to the large pendency of cases, it is unlikely that the trial can be concluded within a reasonable period. I am, therefore, persuaded to release the Applicant on bail.

14. Hence the following order:

ORDER

1] The Application is allowed;

2] The Applicant be released on bail in Special Case No. 927 of 2024 arising out of Special LAC/C.R. No.383 of 2023 registered with Ghatkopar Police Station, Mumbai, on furnishing a P.R. bond in the sum of Rs. 1,00,000/- with one or more sureties in the like amount.

3] The Applicant shall mark his presence at Ghatkopar Police Station on the first Monday of every month between 11 am to 1 pm till conclusion of the trial.

4] The Applicant shall not indulge in the activity for which he has been arraigned in this case.

5] 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.

6] 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.

7] the Applicant shall regularly attend the proceedings before the jurisdictional Court.

8] 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.)