

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3379 OF 2024**

Zishan Arif Memon	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Dilip Mishra a/w. Mr. Ayaz Khan and Ms. Mallika Sharma for applicant.

Mr. Balraj B. Kulkarni, APP for respondent-State.

Mr. R. R. Nikam, PSI, NDPS Crime Branch, Thane City

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

P.C. :

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

2. The applicant is seeking bail as he was arrested on 06.01.2024 in connection with FIR No.0869 of 2023 dated 27.10.2023 registered at Manpada Police Station, District Thane City, for offences under Section 224 of the Indian Penal Code, 1860 and Sections 8(c) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. In the present case, information was received about contraband being handled and in that context, accused No.1 was apprehended with 125.6 grams of contraband mephedrone (MD). During the course of investigation, co-accused No.1 claimed that he had been sourcing the MD from the applicant. In that connection, the applicant was arrested on 06.01.2024 and he has remained behind bars since then. In the present case, chargesheet has been filed and charges are yet to be framed.

4. The learned counsel for the applicant submitted that in the present case, other than the statement of the co-accused person, there is no material at all to link the applicant with the incident in question. No contraband is admittedly recovered from the applicant. It is further pointed out that when the applicant was on bail in connection with an earlier case registered against him and he was abiding by the condition imposed for attending a particular police station, he was picked up on 06.01.2024 in connection with the present case. It is submitted that the FIR in the present case, was registered on 27.10.2023 and the applicant had been attending the said police station in terms of order dated 07.02.2023 passed by this Court (Coram: M. S. Karnik, J) in Bail Application No.3522 of 2021, even in November and December 2023. Yet, despite the co-accused person having named the applicant in his statement recorded on 01.11.2023, the applicant was arrested only on 06.01.2024 and that too, without any material to link the applicant with the incident in the present case. On this basis, it is submitted that this Court may consider enlarging the applicant on bail.

5. The learned APP, on the other hand, opposed the present bail application. It was submitted that while the applicant was on bail in the earlier offence, he committed the present crime. It was submitted that there was exchange of whatsapp messages between the co-accused person and the applicant. The co-accused person had saved the mobile number of the applicant in the name of Shaan and Shaan2. The aforesaid material and the criminal background of the applicant, demonstrates that he need not be shown any indulgence in the facts of the present case.

6. This Court has perused the material on record, in order to appreciate the rival submissions. It is to be noted that the applicant was granted bail by

this Court by the aforesaid order dated 07.02.2023, in connection with the earlier FIR concerning offences under the NDPS Act. This Court finds that in the light of the material available in the said earlier case, invocation of Section 29 of the NDPS Act and possibility of the applicant being convicted, appeared to be bleak. On that basis, the applicant was granted bail and one of the conditions imposed upon the applicant was to report to the concerned police station on every Sunday. It is undisputed that after the order dated 07.02.2023 was passed by this Court in the earlier case granting bail to the applicant, he was abiding by the said condition and accordingly, he attended the said police station even in November and December 2023.

7. The statement of the co-accused in the present case was recorded on 01.11.2023, wherein he claimed that the contraband i.e. mephedrone was sourced from the applicant. In that connection, he referred to two specific mobile numbers on which he allegedly contacted the applicant and he used to exchange whatsapp messages. The statement having been recorded on 01.11.2023 itself, it is strange that the investigation authority took more than two months to apprehend the applicant and that too, when he was attending the concerned police station in terms of the aforesaid order, whereby he was granted bail in the earlier case.

8. It is to be noted that the statement of the applicant recorded after being arrested, shows a specific mobile number which does not match with either of the two mobile numbers given by the co-accused person in his statement dated 01.11.2023. There is also no other material placed on record placed by the investigating authority to show as to how the applicant could be said to be connected with the two mobile numbers mentioned by the co-accused person in his statement. There is also absence of material to

show as to what was the nature of whatsapp messages allegedly exchanged between the co-accused person and the applicant. It is also difficult to understand as to how the applicant could be linked with the two mobile numbers saved as Shaan and Shaan2 by the co-accused person. That leaves only the statement of the co-accused person for involving the applicant in the present case. Admittedly, the contraband was not recovered from the possession of the applicant and it is the specific case of the investigating authority that commercial quantity of MD was recovered from the co-accused person on the date of the incident i.e. 26.10.2023.

9. In the light of the aforesaid material, this Court finds that the investigating authority has fallen short of indicating as to what *prima facie* material is available to link the applicant with the co-accused person and consequently, the incident of recovery of contraband in the present case. To that extent, the applicant has been able to make out his case to satisfy the first limb of the stringent twin test contemplated under Section 37 of the NDPS Act. As regards the second limb of the test, there is no doubt about the fact that the applicant is an accused in the earlier case also. But, it is to be noted that in the order dated 07.02.2023 passed by this Court granting bail to the applicant in the earlier case, a *prima facie* conclusion has been rendered that the possibility of conviction of the applicant in the said case, appears to be bleak. In that context, it can be said that the second limb of the twin test is also satisfied by the applicant. In view of the above, the application deserves to be allowed.

10. Accordingly, it is allowed in the following terms:

- (i) The applicant shall be released on bail in connection with FIR No.0869 of 2023 dated 27.10.2023 registered at Manpada Police Station, District

Thane City, 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 applicant, upon being released on bail, shall report to ATS Thane unit 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.

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

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

13. The application is disposed of.

(MANISH PITALE, J)