

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3541 OF 2024

Afsar Jalil Ahmed Khan ... Applicant
Vs.
State of Maharashtra ... Respondent

Ms. Tanvi Girish Tapkire and Syed Shabana for Applicant.
Mr. Babu V. Holambe-Patil, APP for Respondent-State.
Mr. Dipak B. Kadbhone, PSI, Shivajinagar Police Station, Mumbai.

CORAM : MANISH PITALE, J.
DATE : NOVEMBER 18, 2024

P.C. :

. Heard Ms. Tapkire, learned counsel for the applicant and Mr. Holambe-Patil, learned APP for the respondent-State.

2. The applicant is seeking bail as he was arrested on 15.10.2023 in connection with FIR No.0684 of 2023 dated 05.08.2023 registered with Shivaji Nagar Police Station, Mumbai, for offences under Sections 8(c) and 22(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. The learned counsel for the applicant has referred to the documents filed along with the charge-sheet and it is submitted that the material on record falls short of linking the applicant with the offences in question and there are dubious circumstances in which the investigating authority has arrested the applicant. It is submitted that since the applicant has a strong case on merits and there is nothing to show any criminal antecedents, this Court may consider allowing the application.

4. On the other hand, the learned APP has opposed the application and he relies upon the statements of the co-accused persons, as well as

the recovery of contraband at the behest of the applicant himself.

5. This Court has perused the material on record. The same shows that there are reasons for favourably considering the application. The reasons are as follows:-

- a. The applicant is not named in the FIR and accused No.1, from whom it is alleged that small quantity of contraband i.e. 25 grams of MD was recovered, did not name the applicant;
- b. The co-accused No.4 also did not name the applicant and it is only at the behest of accused No.2 that the name of the applicant, arraigned as accused No.3, has cropped up;
- c. Even if the statement of the accused No.2 in the form of memorandum under Section 27 of the Indian Evidence Act, 1872 (Evidence Act) is perused, it is found that the said accused also did not directly name the applicant. He claimed that the source of contraband was a particular place where an individual was known as a supplier. It is claimed that when the police reached the said place, a young boy confirmed that the individual, as described by the accused No.2, was indeed the supplier and when the photograph of the applicant was shown to the accused No.2, he allegedly identified the applicant;
- d. *Prima facie*, such material can be said to be a very tenuous link for the applicant to be arraigned as an accused in the facts and circumstances of the present case;
- e. It is to be noted that even according to the investigating agency, the applicant was arrested from his native place in Uttar Pradesh. He allegedly voluntarily agreed to accompany the police personnel to come to Mumbai. There is nothing to

show that transit remand was obtained in accordance with law by the police and in any case his arrest is shown much later after having reached Mumbai. The applicant has made out a *prima facie* case about his arrest being vitiated in such circumstances;

- f. The recovery of the contraband allegedly at the behest of the applicant in the form of 23 bottles of cough syrup containing codeine as per the memorandum under Section 27 of the Evidence Act *prima facie* appears to be rendered suspicious, for the reason that it is supposed to have been recovered from the area in an open land adjacent to a building where trash was stored. Such material *prima facie* falls short of linking the applicant with the principal offender, who himself was granted bail as he was found to be in possession of small quantity of contraband MD.

6. This Court is of the opinion that, therefore, the applicant satisfies the requirements of Section 37 of the NDPS Act.

7. For the aforesaid reasons, the application is allowed in the following terms:-

- (A) The applicant shall be released on bail in connection with in connection with FIR No.0684 of 2023 dated 05.08.2023 registered with Shivaji Nagar Police Station, Mumbai, on furnishing P.R. Bond of Rs.50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court;
- (B) The applicant shall appear before the trial Court, except when exempted for reasons to be recorded in writing. He shall cooperate with the trial Court for expeditious disposal of the trial;

- (C) The applicant shall report to Shivajinagar Police Station on the first Monday of every month, 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) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile number and residential address to the trial Court and update about the same, if there is any change.

7. Needless to say, violation of any of the aforesaid conditions would make the applicant 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 applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

8. The bail application stands disposed of accordingly.

(MANISH PITALE, J.)

Minal Parab