

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

BAIL APPLICATION NO. 3696 OF 2024

Irfan Ahmed Abdullah Aahat Shah

...Applicant

Versus

The State of Maharashtra

...Respondent

- Ms. Shweta Waghdhare i/b Ms. Lochan Chandka, for Applicant.
- Mr. Kiran C. Shinde, APP for Respondent.
- Mr. Bhosale, PSI, ANC, Thane, present.

CORAM : MANISH PITALE, J.

DATE : 05th DECEMBER, 2024.

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P. C. :

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

2. The applicant in the present case arrested on 09th September, 2020 in connection with First Information Report No.0348 of 2020, dated 09th September, 2020, registered at Police Station Kalwa, District Thane, for offences under Sections 8(c), 20 (b) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. The allegation against the applicant is that he alongwith co-accused No.1 was found in possession of 65.214 kg of *Charas*. The *panchanama* was executed on 08th September, 2020 and upon registration of the FIR the applicant was arrested. The chemical analysis report of the said

alleged contraband shows that it is indeed consisted of *Charas*.

4. The learned counsel for the applicant submits that in the present case the sample that were drawn and collected during the execution of the *panchanama* on 08th September, 2020, were the very samples that were forwarded to the laboratory on 09th September, 2020, without the intervening mandatory procedure contemplated under Section 52A of the NDPS Act being complied with. It was submitted that subsequently, an application was moved before the Magistrate for carrying out the exercise under Section 52A of the NDPS Act and inventory *panchanama* was executed on 26th October, 2020 and the Magistrate also issued certificate on the said date. But, since the laboratory report itself shows that the tests were carried on the samples received on 09th September, 2020, the whole process has been vitiated and a strong case is made out in favour of the applicant.

5. On the other hand, the learned APP in the present case submitted that the procedure contemplated under Section 52A of the NDPS Act was carried out at the earliest and since inventory *panchanama* was executed on 26th October, 2020 and the Magistrate also issued the certificate on the said date, the contention raised on behalf of the applicant can be said to be a matter for trial. It was submitted that huge quantity of contraband was seized and considering the seriousness of the offence this Court may not show

any indulgence to the applicant.

6. Having heard the rival submissions, this Court is inclined to allow the present application. The Supreme Court in the case of *Union of India Vs. Mohanlal & Anr.*¹, while emphasizing upon the mandatory nature of Section 52A of the NDPS Act, also emphasized that the purity of the process of seizure and sampling was equally important in such cases. The purpose of exercise under Section 52A of the NDPS Act is to ensure that inventory *panchanama* executed before the Magistrate and the certificate issued by the such authority leads to the samples drawn before the Magistrate being sent to the laboratory for testing in terms of the mandatory procedure.

7. In the present case, the documents on record show otherwise. The *panchnama* executed on 08th September, 2020 shows that the samples were drawn at the spot and labeled A1, A2, B1, B2, C1, C2, D1 and D2. The forwarding letter to the concerned laboratory dated 09th September, 2020 shows that these very samples were forwarded by the Investigating Officer and there is an acknowledgment of receipt of the same by the concerned Clerk of the laboratory dated 09th September, 2020. In fact, the chemical analysis report dated 23rd February, 2021, while recording that the samples contained contraband *Charas*, specifically records that the samples were received on 09th September, 2020.

1 (2016) 3 SCC 379

8. The application for mandatory procedure under Section 52A of the NDPS Act admittedly moved after 09th September, 2020. In fact, the inventory *panchanama* was executed on 26th October, 2020 and the Magistrate also issued certificate on the said date. This clearly indicates that the samples that were drawn before the Magistrate were not sent for chemical analysis, while samples drawn at the spot when the *panchanama* was executed were the very samples sent for chemical analysis. This indicates a strong *prima facie* case in favour of the applicant and therefore, the application deserves to be allowed.

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

- (A) The applicant shall be released on bail in connection with FIR No.0348 of 2020, dated 09th September, 2020, registered at Police Station Kalwa, District Thane, on furnishing PR bond of ₹ 50,000/- with one or two sureties in the like amount, to the satisfaction of the Trial Court.
- (B) The applicant shall report to the office of Anti Narcotics Cell, Thane, on the First Monday of every month between 10.00 a.m. to 12.00 noon, during the pendency of the trial.
- (C) The applicant shall attend the proceedings before the Trial

Court on every date, except when exempted, for reasons to be recorded in writing.

- (D) The applicant shall surrender his passport, if any, before the Trial Court within one week of being released on bail.
- (E) The applicant shall not tamper with the evidence in any manner. He shall not influence the informant, witnesses or any other persons concerned with the case.
- (F) The applicant shall upon being released immediately inform the Investigating Officer of his Contact numbers and residential address and update the same in case of any change.

10. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled.

11. It is made clear that the observations made in this order are limited to the question of grant of bail to the applicant and that the Trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

12. The application is disposed of in above terms.

(MANISH PITALE, J.)