

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3891 OF 2024**

Navfor Donetas Ozar @ Nwafor Dnatus Azor ... Applicant

vs.

The State of Maharashtra ... Respondent

Mr. Vikas Chavan a/w. Mr. Kamlesh Satre and Mr. Aryan Kotwal for applicant.

Ms. Megha S. Bajoria, APP for respondent-State.

Mr. Uday Pathak, PSI, ANC, Mira-Bhayandar Vasai-Virar.

CORAM : MANISH PITALE, J.

DATE : 05th DECEMBER, 2024

P.C. :

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

2. The applicant is apprehending arrest in connection with FIR No.0413 of 2023 dated 08.06.2023, registered at Kashimira Police Station, District Mira-Bhayandar Vasai-Virar, for offences under Sections 8(c) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. The allegation against the applicant is that he, alongwith the co-accused persons, was found to be in possession of 503 grams of mephedrone (MD), which is commercial quantity.

4. The applicant was arrested on 08.06.2023. It is the case of the applicant that a perusal of the *panchanama* drawn on 07.06.2023 alongwith the forwarding letters, sending the samples to the laboratory as well as the Chemical Analysis (CA) Report, would show

that the mandatory exercise contemplated under Section 52A of the NDPS Act, was not conducted in the present case and the samples seized from the spot were directly sent for chemical analysis. It is submitted that this completely vitiates the case of the prosecution and therefore, this Court may consider allowing the present application.

5. The learned APP invited attention of this Court to the CA report, which indeed shows that the samples sent to the lab, contained the contraband MD. It is submitted that since commercial quantity is involved, this Court may not show any indulgence to the applicant.

6. This Court has perused the material on record. The *panchanama* dated 07.06.2023 shows that the contraband MD was seized and samples were prepared and labelled. The documents on record further show that these very samples were forwarded immediately on 08.06.2023 to the concerned lab for chemical analysis. The CA report also shows that the samples were received on 08.06.2023 and the report was prepared on 11.06.2023.

7. The material on record does not indicate that any effort was made to move the Magistrate to carry out the mandatory exercise contemplated under Section 52A of the NDPS Act.

8. The Supreme Court, in the case of *Union of India Vs. Mohanlal and another* [(2016) 3 SCC 379], particularly in paragraph Nos.15 to 19 thereof, emphasized upon mandatory nature of the exercise contemplated under Section 52A of the NDPS Act, while discussing the aspect of seizure and sampling.

9. The aforesaid position of law abundantly makes it clear that when such an exercise has not been carried out, it can be said that a strong *prima facie* case is made out by the applicant in his favour. It is stated that the passport of the applicant is already deposited with the investigating officer.

10. In view of the above, the applicant has made out a case in his favour, despite the fact that under Section **37** of the NDPS Act, the accused is required to satisfy a higher threshold to succeed in such an application for bail.

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

- (i) The applicant shall be released on bail in connection with FIR No.0413 of 2023 dated 08.06.2023, registered at Kashimira Police Station, Mira-Bhayandar Vasai-Virar, on furnishing PR Bond of ₹ 25,000/- 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 Kashimira Police Station, Mira-Bhayandar Vasai-Virar 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, for the reasons to be recorded in writing.

- (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.

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

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

14. The application is disposed of.

(MANISH PITALE, J)

Digitally
Signed by
PRIYA
KAMBLI
Date: 2024.12.05
Time: 15:45:35
+0530

Priya Kambl