IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4279 OF 2024

Kyle Cummings ... Applicant
Versus
The Union of India & Anr. ... Respondents

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Adv. Lakshmi Raman a/w Parshva Shah and Soumya Kamat for the Applicant.
Mr. Siddharth Chandrashekhar i/by Megha B. Poddak for Respondent No.1.
Mr. Sagar R. Agarkar, APP for Respondent No.2-State.

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CORAM: MANISH PITALE, J.
DATE : 4th DECEMBER 2024

P.C. :

. The applicant in present application is seeking bail as he was arrested on 21st May 2024 in the present case, which concerns a proceeding initiated under Section 50A of the Narcotic Drugs and Psychotropic Substances Act, 1985 concerning controlled delivery. The present case involves contraband in the form of commercial quantity of Methamphetamine and MDMA Tablets and MDMA powder.

2. Instead of going into detailed submissions, the learned counsel for the applicant, at the outset, relied upon a recent order dated 25th November 2024 passed by the Division Bench of this Court (Coram: Bharati Dangre & Manjusha Deshpande, JJ.) in

Criminal Writ Petition (St.) No. 21016 of 2024, whereby co-accused person, i.e. Shrawan Joshi was granted bail by holding that the arrest of the said person also effected on 21st May 2024, was itself rendered null and void in the light of the observations made in the said order.

3. It is submitted that the subject packet in the present case was in fact addressed to the said co-accused Shrawan Joshi and in that sense, the said accused person could be said to be the main accused. The Division Bench of this Court having granted relief to said co-accused person, it was submitted that the present bail application also deserves to be allowed. In that context, attention of this Court was invited to pages 173 and 174 of the application, which pertain to the arrest memos of the said co-accused person-Shrawan Joshi and the applicant herein. It is submitted that the contents thereof are virtually identical and therefore, for the reasons recorded by the Division Bench in the aforesaid order, the present application may also be allowed.

4. The learned counsel for respondent No.1 submitted that this case concerns commercial quantity of contraband and the *modus operandi* adopted by the applicant, was that he use to call for contraband and substances in the name and address of the co-accused-Shrawan Joshi and therefore, the main accused and conspirator is the applicant before this Court. It was submitted that the fact that Division Bench of this Court by the aforesaid order has granted relief to the co-accused-Shrawan Joshi cannot be

denied.

5. A perusal of the aforesaid order of the Division Bench passed in the case of *Shrawan Joshi v/s. Union of India* (supra), shows that it indeed arises from the same file number and the very same NDPS case, wherein the applicant is a co-accused person. A perusal of the pages 173 and 174 of the application, indeed show that the contents of the arrest memos are almost identical. The Division Bench in the said order, while granting relief to the co-accused-Shrawan Joshi found that the manner in which the co-accused was arrested and the contents of the arrest memo, clearly demonstrated that the requirements of law were violated and that principles laid down by the Supreme Court in the cases referred to in the said order, were violated in the present case.

6. Upon referring to the said position of law, the Division Bench of this Court allowed the writ petition in the following terms :

> *"7. Resultantly, the arrest of the petitioner is illegal and for the very same reason the subsequent remand orders also cannot be sustained, in absence of the grounds of arrest being communicated to the petitioner.*
>
> *Resultantly by declaring the arrest of the petitioner effected on 21/05/2024 and the remand order dated 21/05/2024, passed by the Sessions Court, Mumbai as null and void, since the arrest has been effected in utter disregard to Section 50 of the Code of Criminal Procedure as well as the fundamental right conferred on the petitioner under Article 22 of the Constitution, the Writ Petition is made absolute.*

The petitioner is directed to release on bail on furnishing surety to the satisfaction of the Sessions Court, 42nd Court, Mumbai."

7. Since the applicant herein was arrested and the arrest memo in the present case is almost identical to that executed in the context of co-accused-Shrawan Joshi, this Court is inclined to allow the application.

8. Accordingly, the application is allowed in the following terms :

(a) The applicant shall be released on bail in connection with F.No. SG/INV-14/2024-25/SIIB (APSC) concerning NDPS Special Case No. 1685 of 2024, on furnishing P.R. Bond of Rs. 50,000/- and one or two sureties in the like amount.

(b) The applicant shall report to the office of SIIB, APSC, Mumbai Zone-III, Avas Corporate Point, Andheri East, Mumbai, on first Monday of each month between 10:00 a.m. and 12:00 noon, during the pendency of the trial.

(c) The applicant shall cooperate with the trial Court for expeditious trial and he shall attend each and every date, unless exempted by the trial Court, for reasons to be recorded in writing.

(d) The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant,

witnesses or any other person concerned with the case.

(e) The applicant shall surrender his original passport before the trial Court, within one week, upon being released on bail.

(f) The applicant, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and residential address with updates in case of any change.

9. 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. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

10. The application is disposed of.

11. At this stage, the learned counsel for the applicant prays for cash security till the surety is furnished.

12. The applicant is permitted to furnish cash security of Rs.50,000/- for a period of four weeks.

MANISH PITALE, J.

BIPIN DHARMENDER PRITHIANI