

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 4849 OF 2024**

Wasim Nurujjma Khan

..Applicant

Versus

The State of Maharashtra
(through A.N.C. Ghatkopar Unit)

...Respondent

Ms. Alisha Parekh, with Mr. Taraq Sayed, for the Applicant
Mr. H.J. Dedhia, A.P.P., for the Respondent-State.
Mr. R.V. Londhe, A.P.I., A.N.C., Ghatkopar Unit, present.

CORAM: N. J. JAMADAR, J.

DATED : 18 DECEMBER 2024

ORDER:

1. The Applicant, who is arraigned in NDPS Special Case No. 875 of 2022 arising out of C.R. No. 9 of 2022, Anti Narcotic Cell (ANC), Mumbai, for the offences punishable under Sections 20(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act, 1985"), has preferred this Application to enlarge him on bail.

2. On 2nd February 2022, pursuant to an intimation, ANC, Ghatkopar Unit, mounted a surveillance near Bainganwadi, Gowandi, Mumbai. At 5.10 p.m., the Applicant approached the service road. The Applicant was carrying a black cloth bag. The Applicant stood near Bhartiya Ekta Sangh public facilities. As the movements of the Applicant appeared to be suspicious, he

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was accosted. The Applicant was apprised of his right under Section 50 of the NDPS Act, 1985. In the search of the bag that the Applicant was carrying, a blackish brown slab with pungent smell was found kept in a transparent polythene bag. Upon testing, the said substance turned out to be *charas*. It weighted 1 kg. 100 gm. The contraband substance was seized and labelled under panchnama.

3. Pursuant to the discovery made by the Applicant, Sohil Shamim Momin Alias Sohel Kanya (A2) and Juber Soheb Shaikh (A3) were apprehended and *charas* was also allegedly recovered from the co-accused as well. Post completion of investigation, charge-sheet came to be lodged.

4. Ms. Alisha Parekh, the learned Counsel for the Applicant, submitted that the search and seizure of the contraband substance from the possession of the Applicant is riddled with grave suspicion. Though the specific information was allegedly received at ANC, Ghatkopar, on 2nd February 2022 at 1.00 p.m, the extract of Information Register indicates that an entry to that effect was made at 11.35 a.m. only. Secondly, though F.I.R. was lodged at Cuffe Parade Unit vide C.R. No. 9 of 2022 at 10.30 pm, Station Diary entry made by the concerned official, on that day, indicates that as early as at 5.00 p.m. F.I.R. No. 9 of 2022,

was recorded in the said entry. Thus, the fact that F.I.R. came to be registered even before the alleged seizure of the contraband substance from the possession of the Applicant casts serious doubt on the veracity of the prosecution case.

5. It was further submitted that there are inconsistencies regarding the identification of the contraband substance which was seized and produced before the learned Magistrate and the samples which were collected and forwarded to F.S.L. These infirmities also furnish a ground to enlarge the Applicant on bail. Reliance was placed on the orders passed by this Court in **Shabir Usman Shaikh Vs The Union of India & Anr¹** and **Anju Mujaali Shaikh Vs The State of Maharashtra.²**

6. Ms. Parekh further submitted that the Applicant has been in custody for almost three years. It is unlikely that the trial can be concluded within a reasonable period. Thus on account of long incarceration also, the Applicant deserves to be enlarged on bail.

7. In opposition to this, Mr. Dedhia the learned A.P.P., strongly opposed the prayer for bail. It was submitted that the minor discrepancies in the documents which evidence the seizure of commercial quantity of *charas* from the Applicant do

1 Bail Application No 731 of 2024, dt. 13th August 2024

2 Bail Application No. 1781 of 2024, dt 20th August 2024

not justify an inference that the Applicant is not guilty of the offence for which he has been arraigned. Mr. Dedhia further submitted that delay in trial is attributable to accused and co-accused. Therefore, the Applicant cannot be permitted to take advantage of his own wrong.

8. I have carefully perused the material on record, and considered the submissions canvassed across the Bar. The information note forwarded by the then P.S.I., ANC, Ghatkopar Unit, indicates that information was received by police head-constable, Mr. Chougule at 1.00 p.m. In compliance with the mandate contained in Section 42(2) of the NDPS Act, the said information was forwarded to the superior officer. To the said intermittent note, the copies of Station Diary Entry and extract of Information Register were annexed. Though the Station Diary appears to be made at 1.40 pm. Yet the extract of Information Register indicates that the entries therein were made at 11.30 a.m. much prior to the receipt of the intimation at 1.00 p.m. *Prima facie*, there is a material discrepancy as regards the time at which the intimation was received. The confusion is further confounded by the communication dated 2nd February 2022 requisitioning the articles and equipments for seizure (page 56). It records that the intimation was received at 11.00 am.

9. Secondly, the F.I.R. (page 65) seems to have been registered vide C.R. No. 9 of 2022 at 22.30 hours. In contrast, the Station Diary entry made on 2nd February 2022 at 17.00 hours records that the concerned official had registered the F.I.R. at Cuffe Parade Police Station vide C.R. No. 9 of 2022 for an offence punishable under Section 20(b) of N.D.P.S. Act and returned to police station. The presence of F.I.R. number in the said entry at 5.00 pm *prima facie* appears inexplicable.

10. In somewhat similar situations where the crime number was mentioned on the documents at a point anterior to the registration of F.I.R, this Court has exercised the discretion to enlarge the accused on bail as that created a serious doubt about the veracity of the prosecution case. In the case of **Shabbir Usman Shaikh** (Supra) on which reliance was placed by the learned Counsel for the Applicant, this Court had noted two earlier orders in the cases of **Zaid Zahir Rana Vs The State of Maharashtra³** and **Chand Riyaz Shaikh S/o. Riyaz Shaikh Vs The Union of India & Anr.⁴**

11. In the light of the aforesaid glaring inconsistencies, I am afraid to accede to the submission on behalf of the prosecution

3 Bail Application No. 1486 of 2023, order dt. 30th October 2023.

4 Bail Application No. 3269 of 2022, order dt. 13th July 2023.

that there are minor discrepancies. *Prima facie*, the discrepancies are such that they may erode the credibility of the prosecution version.

12. The ground of discrepancy in the identity of the sample which was collected during the course of inventory, i.e., “the sample was kept in a transparent plastic pouch and stapled” and the description of the articles received by the F.S.L., i.e., “dark brown lumps in three separate press lock polythene packed in three separate packets” was next pressed into service on behalf of the Applicant. *Prima facie* the discrepancy appears to be with regard to the manner in which the sample was packed. Were the samples stapled or packed in press lock polythene bags, as recorded in the C.A. Report, would be the question. However, I do not deem it necessary to delve into this aspect, at this stage, in detail, save and except to note that there is some discrepancy.

13. In the totality of the circumstances, I find substance in the submissions on behalf of the Applicant that the prosecution case is *prima facie* fraught with inconsistencies. Cumulatively, the aforesaid inconsistencies may justify an inference that, eventually, the Applicant may not be found guilty of the

offences for which he has been arrayed. Thus, the interdict contained under Section 37 of the N.D.P.S. Act may not operate.

14. In any event, the Applicant has been in custody since 2nd February 2022. While enlarging the co-accused Sohil Shamim Momin Alias Sohel Kanya (A2) on bail, this Court had considered the ground of long period of incarceration as well. It is trite long period of incarceration without a real prospect of completion of trial within a reasonable period impairs the right of an accused to have speedy trial guaranteed under Article 21 of the Constitution of India. By a series of judgments, it has been ruled that even the statutory restrictions in the matter of grant of bail, like the one contained under Section 37 of the NDPS Act 1985, melt down where the accused has undergone a long period of incarceration without a realistic prospect of expeditious conclusion of the trial.

15. The Applicant has been in custody for almost three years. It is extremely unlikely that the trial can be concluded within a reasonable period. I am, therefore, inclined to exercise the discretion in favour of the Applicant.

16. Hence the following order:

: O R D E R :

- (i)** The Applicant be released on bail in NDPS Special Case No. 875 of 2022 arising out of C.R. No. 9 of 2022. Anti Narcotic Cell, Mumbai, on furnishing a P.R. Bond of Rs.1,00,000/- with one or more sureties in the like amount to the satisfaction of the learned Special Judge.
- (ii)** The applicant shall mark his presence at the Anti Narcotic Cell, Mumbai, on the first Monday of every month between 10.00 am to 12.00 noon for a period of two years or till the conclusion of the trial, whichever is earlier.
- (iii)** The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.
- (iv)** On being released on bail, the applicant shall furnish his contact number(s) and residential address to the investigating officer and shall keep him updated, in case there is any change.
- (v)** The applicant shall not indulge in identical activities for which he was been arraigned in this case.

(vi) The Applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application stands disposed

[N. J. JAMADAR, J.]