

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 4961 OF 2024**

Nihadul Sattar Sayad ... Applicant

vs.

The State of Maharashtra ... Respondent

Ms. Zehra Charania a/w. Mr. Ayaz Khan, Mr. Dilip Mishra and Ms. Mallika Sharma for applicant.

Mr. Bapu V. Holambe-Patil, APP for respondent-State.

Mr. S. P. Ahire, PSI, Crime Branch, Unit 5, Thane City.

CORAM : MANISH PITALE, J.

DATE : 14th DECEMBER, 2024

P.C. :

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

2. The applicant in the present case was arrested on 28.04.2023 in connection with FIR No.111 of 2023 concerning Special Case No.902 of 2023 pending before the Special NDPS Court at Thane, for offences under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. It is alleged that information was received about contraband being handled by certain persons. On the basis of such information, raid was conducted. Three accused persons were found in possession of contraband mephedrone (MD). It is alleged that the applicant was one of the three accused persons and from the applicant, commercial quantity i.e. 110 grams of MD was recovered.

4. The learned counsel for the applicant raised various grounds to demonstrate that the case of the prosecution is vitiated due to non-

compliance with requirements of the NDPS Act and rules. Two such grounds include, firstly, the allegation that the envelope in which the contraband was stored upon recovery, was *khaki* coloured, while the inventory *panchanama* executed on 16.06.2023 shows that the contraband and even the sample drawn at the time of seizure, were taken out from a *pista* coloured envelope. Secondly, it was submitted that the sample drawn at the time of seizure itself, was directly sent for the chemical analysis to the laboratory, without intervention of the mandatory procedure under Section 52A of the NDPS Act and this is evident from the documents on record, thereby showing that the entire prosecution case is vitiated. Other grounds were also raised, but much emphasis was placed on the aforesaid two grounds.

5. The learned APP submitted that the allegation against the applicant pertains to the commercial quantity of contraband. Therefore, stringent requirements under Section 37 of the NDPS Act are required to be satisfied. It is submitted that the aforesaid grounds could be said to be matters for trial and therefore, this Court may not show any indulgence to the applicant.

6. This Court has perused the material on record with specific reference to the aforesaid two grounds raised on behalf of the applicant. It is found that the *panchanama* executed on 28.04.2023 specifically records that the contraband allegedly recovered from the applicant, was collected in a transparent plastic pouch, which was eventually kept in a *khaki* coloured envelope. But, the inventory *panchanama* executed on 16.06.2023 specifically records that the contraband was taken out from a *pista* coloured envelope. This does create *prima facie* suspicion about the contraband, which was seized on 28.04.2023, being the very contraband produced before the

Magistrate on 16.06.2023, when the inventory *panchanama* was executed.

7. But importantly, in the present case, the documents on record clearly show that the sample that was drawn at the time of seizure itself, was directly forwarded to the concerned laboratory for chemical analysis. This is evident from the acknowledgement given by the said laboratory on the forwarding letter dated 02.05.2023. The inventory *panchanama* was executed later i.e. on 16.06.2023, on which date, the Magistrate issued the certificate under Section 52A of the NDPS Act.

8. This indicates that the aforesaid mandatory exercise under Section 52A of the NDPS Act was not completed before sending the sample for chemical analysis to the laboratory. Even the chemical analysis report is not on record of the charge-sheet.

9. This Court is of the opinion that the aforesaid facts do create a strong *prima facie* case in favour of the applicant that the entire prosecution case is vitiated. Therefore, the first limb of the stringent twin test contemplated under Section 37 of the NDPS Act, is satisfied. Since the applicant does not have any criminal antecedent, the second limb of the stringent twin test is also satisfied. The applicant has made out a case for allowing the present application.

10. 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.111 of 2023 concerning Special Case No.902 of 2023 pending before the Special NDPS Court at Thane, on furnishing

PR Bond of ₹ 50,000/- 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 Shrinagar Police Station, Thane on first Monday of every 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.

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

12. 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.

13. The application is disposed of.

(MANISH PITALE, J)