

Prasad Rajput
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 5124 OF 2024

Salman Yusuf Shaikh

.. Applicant

Versus

Union of India and Anr.

.. Respondents

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- Ms. Munira Palanpurwala a/w Kainat Sayed, Ms. Sumaiya Khan and Ms. Deepa Amati for Applicant.
- Mr. D.P. Singh, for Respondent No.1
- Ms. D.S. Krishaniyer, APP for the State.

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 17, 2024

P.C.:

1. Heard Ms. Palanpurwala, learned Advocate for the Applicant, Mr. Singh, learned Advocate appearing for Respondent No.1 and Ms. D.S. Krishnaiyer, learned APP for the State.

2. This is an Application seeking enlargement on bail filed by Applicant who is arrayed as accused No.2 namely Salman Yusuf Shaikh prosecuted by Narcotics Control Bureau (for short “NCB”) in C.R. No. 85 of 2021 under Sections 8 (c) r/w 22(b) (ii) (A), 21(c), 22(b), 25, 27A 28, 29, 32 (B) & 35 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the ‘NDPS Act’).

3. At the outset, Ms. Palanpurwala, learned Advocate appearing for the Applicant draws my attention to the order dated 9th May, 2024 passed in Bail Application No. 53 of 2024 in respect of Accused No.1- Mohammed Nasir Saifur Rehman Khan and would submit that insofar as the present Applicant is concerned, his role is negligible rather inconsequential qua Accused No.1 who has been granted bail. She would therefore urge the Court to consider the present Application on parity with the order dated 9th May, 2024. She would submit that the Applicant was employed for 2 months until the date of incident by Accused No.1 as Assistant.

3.1. Insofar as the incident is concerned, she has meticulously taken me through the facts of the case and would submit that the Intelligence Officer of the NCB received information on 06.09.2021 about Accused No.1 namely Mohammed Nasir Saifur Rehman Khan about illegal storage of Narcotic Drugs / Psychotropics Substance in the residential premises at Byculla (West) Mumbai. She would draw my attention to the said letter appended at page No. 41 of the Application received by the Jr. I.O. of the NCB. She would submit that the NCB Official thereafter raided the premises of Accused No.1 at 44/A, Machiwala Mansion, Ground Floor, Room No.15, Hafiz Ali Bahadur Marg, Byculla (West), Mumbai Jacob Circle, Maharashtra - 400 011 on the intervening evening and night between 6th September, 2021 and 7th September, 2021 and carried out search and seizure and

seized 270 bottles in 3 cartons from the premises of Accused No.1 according to the panchanama by the prosecution appended at page No. 44. At that time, apart from Accused No.1 his sister namely Kusar Shaikh and her two children aged 4 and 2 years old were found to be present. She would draw my attention to paragraph No. 3 at Page No. 45 of the Bail Application which is the panchanama recorded by the Intelligence Officer of NCB. These are admitted facts.

3.2. She would submit that on reading Paragraph Nos. 4 and 5, the limited role attributable to Applicant was that he worked for Accused No.1 and assisted in removing the 3 cartons from the attic in the residential premises of Accused No.1. She would submit that apart from this role, presence of Accused No.2 at the incident spot when raid took place and contraband of Codeine Syrup was seized is the admitted fact. She would submit that the crucial aspect in respect of attribution of role to the accused in procuring, trading, selling and consuming the alleged contraband is not made out by the prosecution. That apart, she would submit that as a hired hand, the Applicant worked on daily wage basis and he earned Rs. 300/- per day from Accused No.1. Hence, she would contend that Applicant's involvement is merely superficial. She would submit that seizure of 3 cartons of Codeine Syrup was made from the premises of Accused No. 1.

3.3. She would submit that insofar as Applicant is concerned, he is a resident of Nagpada alongwith his parents and siblings and all

such relevant information has been provided in the statement recorded by the prosecution. Though she would persuade me to consider the issue of breach of provisions of Section 42 of the NDPS Act, I do not propose to deal with those submissions in view of the admitted and limited role attributed to the Applicant before me. Nevertheless, her contentions with respect to the submissions made under Sections 41 A and 42 are kept open to be agitated, if so required, in any other Court proceedings. She would also submit that aforesaid facts *qua* Applicant in question before the Court go to the root of the matter in ascertaining the role of the Applicant. She would vehemently submit that neither the Applicant can be said to be the resource or supplier or stockist of the alleged contraband syrup nor the Applicant can be said to have knowledge about the alleged contraband considering the limited association of the Applicant with the Accused No.1 for a period of 2 months only. She would in fact draw my attention to the statements made by the prosecution and would submit that none of the statements recorded by the prosecution make out any such case against the Applicant to harbour knowledge about the alleged contraband or the contents of the 3 cartons which were removed by him from the attic at the time of the raid.

3.4. Considering the incarceration of the Applicant in prison for about 3 years 3 months and 8 days and the punitive action under the provisions of the said Act, she would submit that punishment for

indictment and conviction for handling the alleged contraband as provided under the said Act is for a minimum period of 10 years imprisonment which can go up to 20 years. However, considering the role of the Applicant, this is a case where *prima facie* there is no role attributable to the Applicant for procuring or being the source of the alleged contraband and therefore incarceration of Applicant for almost 3 years 4 months be considered by the Court and present Application be allowed.

4. Mr. Singh, learned Advocate appearing for Respondent No.1 has placed on record Affidavit-in-reply dated 16th December, 2024. It is stated in the Affidavit-in-reply that the Trial Court has rejected his previous Applications and that should be the ground for rejection of the present Application. Insofar as the aforesaid issue of the role of the Applicant is concerned, I do not find anything worthwhile stated in the Affidavit-in-reply to answer or to oppose the same on any cogent grounds. All that he would submit is that Applicant has admitted before the Court the fact that the cartons contained Codeine Syrup and he had knowledge about the same that it was to be sold to the customers. That voluntary confessional statement has been brought to my notice which is appended at page No.78. It is seen that the voluntary statement made by Applicant is transcribed in english language. The person who has transcribed the said statement has not endorsed it or stated whether it was explained to him. Applicant has

studied upto 5th standard only. The Applicant before me has signed the statements in English. That statement merely cannot be the ground to keep the Applicant behind bars for an unduly period of time in the facts and circumstances of the present case which are delineated herien above. While drawing parity with the role of Accused No.1 which is of a much higher degree and scale, I am inclined to consider the Application made by the learned Advocate for the Applicant and allow the present bail Application. In support of her submissions the learned Advocate for the Applicant has referred to and relied upon the decision in the case of *Sunil Bhagwandas Dhutiya Vs. The State of Maharashtra*¹ and *Shivraj Gorakh Satpute Vs. The State of Maharashtra*² to contend that *prima facie* search and seizure in the present case is in contravention of the statutory provisions as also the role attributed to the Applicant and the impending trial that would take long time and long incarceration of the Applicant would entitle him to be released on bail. She would also inform the Court that charges are yet to be framed.

5. In view of the above considering the Applicant is in custody since 07.09.2021 and the role attributable to the Applicant by the prosecution, the imprisonment of the Applicant militates against the fundamental right of liberty guaranteed under Article 21 of the Constitution of India and in such facts the Applicant before me

¹ BA No. 2138 of 2017 decided on 14.11.2017

² BA No. 2865 of 2022 decided on 15.09.2023.

deserves to be granted bail.

6. In view of the above observations and findings, I am of the opinion that the Applicant deserves enlargement on bail. Hence, the following order:-

- (i) Applicant- Salman Yusuf Shaikh, who is facing trial in NDPS Special Case No. 254 of 2022 in C.R. No. 85 of 2021 registered with NCB for alleged offences punishable under Section 8 (c) r/w 22(b) (ii) (A), 21(c), 22(b), 25, 27A 28, 29, 32 (B) & 35 of the NDPS Act is ordered to be released on bail in the sum of Rs. 25,000/- (Rs. Twenty Five Thousand only) with one or two sureties to the like amount;
- (ii) Applicant shall report to the NCB, Mumbai Zonal Unit, Mumbai, once every month on the first Thursday of the month between 11:00 a.m. to 02:00 p.m.;
- (iii) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates, unless specifically exempted;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (v) Applicant shall not influence with the witnesses or tamper with the evidence in any manner; and

(vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time, as applicable.

7. The above observations are *prima facie* and should not be construed as an expression of any opinion and are made only for the purpose of grant of bail and the same shall not influence the trial in any manner whatsoever.

8. Bail Application is disposed.

[MILIND N. JADHAV, J.]