

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.5181 OF 2024

Shaeen Rashid Khan ... Applicant
Vs.
Union of India and another ... Respondents

Mr. Shreerat Kamath a/w. Ms. Puja Yadav for Applicant.
Mr. S. S. Chandrashekhar a/w. Ms. Megha Bajoria for Respondent No.1-UI.
Mr. Sagar R. Agarkar, APP for Respondent No.2.

CORAM : MANISH PITALE, J.
DATE : DECEMBER 17, 2024

P.C. :

1. Heard Mr. Kamath, learned counsel appearing for the applicant and Mr. Chandrashekhar, learned counsel appearing on behalf of the contesting respondent No.1 i.e. Union of India through the SIIB, APSC.

2. The learned counsel for the contesting respondent submitted that the time may be granted to file reply affidavit and *Vakalatnama*. It is indicated that the affidavit in reply is ready. In this backdrop, this Court permitted the learned counsel for the contesting respondent to tender the reply affidavit dated 17.12.2024. It was taken on record.

3. The present case is a case of controlled delivery under Section 50-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and the allegation is that, commercial quantity of contraband MDMA was recovered. The applicant was arrested on 24.02.2024 and she has remained incarcerated since then.

4. The learned counsel for the applicant submits that in the present case, there is total non-compliance with the mandatory requirement of Section 52-A of the NDPS Act, thereby vitiating the prosecution case

completely and that, on this ground, the applicant is entitled to be enlarged on bail. It is further submitted that the applicant is a woman and she has no criminal antecedents. On this basis, it is indicated that the applicant satisfies the stringent twin test contemplated under Section 37 of the NDPS Act.

5. In support of the said contention, the learned counsel for the applicant invited attention of this Court to the relevant documents, including *panchanama* dated 15.02.2024, forwarding letter dated 15.02.2024 whereby the samples drawn at the stage of seizure were forwarded to the concerned laboratory, which bears the acknowledgment of the laboratory dated 16.02.2024 and the report of the laboratory dated 27.02.2024. It was submitted that these documents indicate that the samples were directly sent for chemical analysis, without the intervening mandatory procedure under Section 52-A of the NDPS Act. It was highlighted that the procedure was subsequently undertaken in March 2024, which was meaningless.

6. The learned counsel appearing for the contesting respondent relied upon the affidavit in reply. It is submitted that in the present case, commercial quantity of contraband is involved and the material on record sufficiently incriminates the applicant.

7. This Court has perused the documents on record. The *panchanama* dated 15.02.2024 shows that the contraband was seized on the said date and samples were drawn. On the very same date, the samples were forwarded to the chemical analyzer of the concerned laboratory. On 16.02.2024, the laboratory gave its acknowledgment, thereby indicating that the samples, that were prepared at the time of seizure, were directly sent for the chemical analysis to the laboratory. A perusal of the chemical analysis report dated 27.02.2024 shows that the samples were indeed received on 16.02.2024 itself, and thereupon, the

tests were carried out in the laboratory.

8. The documents on record further show that after the chemical analysis report was prepared on 27.02.2024, the inventory *panchanama* was executed on 12.03.2024 and the Magistrate issued the certificate under Section 52-A of the NDPS Act.

9. In the case of *Union of India Vs. Mohanlal and another*, (2016) 3 SCC 379, in paragraphs 15 to 19, the Supreme Court has emphasized upon the mandatory nature of the aforesaid procedure contemplated under Section 52-A of the NDPS Act. It has been indicated that the aforesaid procedure is mandatorily required to be conducted before the samples are sent for chemical analysis to the laboratory, so as to maintain the purity of the process of seizure and sampling. The documents taken note of hereinabove, clearly indicate that the samples drawn at the time of seizure were directly sent for chemical analysis, without intervention of the aforesaid mandatory procedure. This *prima facie* vitiates the case of the prosecution and demonstrates that the applicant has satisfied the first limb of the twin test contemplated under Section 37 of the NDPS Act. The second limb of the test is also satisfied because the applicant, being a woman, has no criminal antecedents.

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

- (A) The applicant shall be released on bail in connection with F.No.SG / INV-71 / 23-24 / SIIB (APSC) on furnishing P.R. Bond of Rs.50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court;
- (B) The applicant shall cooperate with the trial Court for expeditious trial and she shall attend each and every date, unless exempted for reasons to be recorded in writing;

- (C) The applicant shall report to the office of the SIIB, APSC on the first Monday of every month between 10 a.m. and 12 noon;
- (D) The applicant shall not tamper with the evidence of the prosecution. She shall not influence the informant, witnesses or any other person concerned with the case;
- (E) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of her active mobile number and residential address to the trial Court and update about the same, if there is any change.

11. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

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

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

14. The bail application stands disposed of accordingly.

(MANISH PITALE, J.)

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