

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Anticipatory Bail Application No.1242 of 2024

Altamash Rizwan Shaikh

Age 36 years Occ: Business,

Residing at:- 70-72, Nalwala Bldg.,

Room No.10, 2nd Floor, Bara Imam Road,

Mumbai 400 003.

... Applicant

v/s.

The State of Maharashtra

(At the instance of DCB CID

ANC Ghatkopar Unit, in

C.R. No.104 of 2023)

... Respondent

....

Mr Ashish A Dubey, for the Applicant.

Ms Pallavi N Dabholkar, APP, for Respondent State.

PSI Nagesh Chikane, ANC Ghatkopar Unit, Crime Branch, Mumbai.

....

Coram : R.N. Laddha, J.

Date : 26 June 2024

P.C. :

Heard Mr Ashish Dubey, the learned Counsel, appearing on behalf of the applicant and Ms Pallavi Dabholkar, the learned Additional Public Prosecutor, representing the respondent/ State.

2. The applicant apprehends arrest in connection with CR No.104 of 2023, registered at Ghatkopar Police Station, Mumbai, for the offences punishable under Sections 8(k), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985. By the present application, he seeks pre-arrest bail.

3. According to the prosecution, on 29 December 2023, an officer on patrol accosted three individuals standing in suspicious circumstances. On search, they were found in possession of 151 grams of Mephedrone (MD). During interrogation, it was discovered that they obtained the contraband from the applicant and one Shabbir Cyclewala.

4. Mr Ashish Dubey, the learned Counsel, appearing on behalf of the applicant, argues that the applicant had loaned money to his brother-in-law, co-accused Aasif Khan, for a medical urgency. The applicant demanded the loaned sum several times. However, the co-accused, Aasif Khan, refused to repay it and threatened the applicant to implicate him in a false crime. He submits that there is no material linking the applicant to the present crime except for the co-accused's statement. The alleged contraband has already been seized, and nothing remains to be recovered from the applicant. The learned Counsel asserts the applicant's innocence and submits that the applicant is ready to abide by the conditions imposed by this Court.

5. On the other hand, Ms Pallavi Dabholkar, the learned Additional Public Prosecutor representing the respondent/ State, submits that all three co-accused have named the applicant as their supplier of the contraband and furnished related details. The Call Detail Records (CDRs) also demonstrate that the applicant was in constant touch with the co-accused. The contraband seized is of commercial quantity, and

the investigation is ongoing. The offence is serious and against society. The learned APP further submits that the applicant's custody is necessary to investigate the supply chain.

6. It is a settled position in law that the power to grant anticipatory bail is extraordinary. While it has been acknowledged in many instances that regular bail is considered a general rule, the same analogy cannot be applied to anticipatory bail. The decision to grant anticipatory bail must be exercised with careful and prudent discretion by the Court, considering each case's specific circumstances. A straight jacket formula cannot be applied. This power must be exercised with caution, as granting protection in serious cases could potentially lead to a miscarriage of justice or hinder the investigation by allowing tampering or destruction of evidence. A profitable reference in this regard can be made to the decision of the Hon'ble Supreme Court in ***Shrikant Upadhyay & Ors. v. State of Bihar & Anr.***¹

7. Upon perusing the record, *prima facie*, there is material suggesting the applicant's involvement in the present crime. The seized contraband is a commercial quantity. All three co-accused have named the applicant as their supplier with particulars to that effect. Furthermore, there are CDRs to show that the applicant was in touch with the co-accused. The ongoing investigation aims to expose an extensive network involved in the illegal sale of contraband. Given the

1 2024 SCC OnLine SC 282.

gravity of the offence and its implication on society, the custodial interrogation of the applicant would be necessary. As a result, the application stands rejected.

[R.N. Laddha, J.]