

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

Anticipatory Bail Application No.1798 of 2024

Mohammed Sher Sharif Khan
Age 23 years, Occ. Business,
R/at. St. Qureshi Chawl,
Behram Baug, Sakirabai Mehmood
Ali, Unit 1106, Jogeshwari (W),
Mumbai – 400 102.

... Applicant

Vs.

1. Union of India
(At the instance of NCB Mumbai
Zonal Unit File No.NCB/MZU/
CR 49/2021)

2. State of Maharashtra

... Respondents

Mr MA Khan a/w Afnan Husain and Hamza Shaikh, for the
applicant.

Mr Shreeram Shirsat, Spl. PP a/w Karishma Rajesh, for
respondent No.1/ NCB.

Mr Yogesh Y Dabke, APP, for respondent No.2/ State.

Coram: R.N. Laddha, J.

Date: 16 October 2024.

P.C.:

By the present application, the applicant seeks pre-arrest
bail in connection with Special Case No.1409 of 2021 in NCB/

MZU/ CR 49/ 2021, registered with NCB Zonal Unit, Mumbai, for the offences punishable under Sections 8(c) read with 22(c), 27, 27A, 28 and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. According to the prosecution, on 20 May 2021, upon receiving information, the officers of the respondent apprehended the co-accused, Ahsaam Khan, in possession of 62 grams of Mephedrone (MD), a quantity classified as commercial. During the investigation, it was revealed that the applicant was the supplier of the seized contraband.

3. Mr MA Khan, the learned Counsel appearing on behalf of the applicant, asserts the applicant's innocence, contending that at the time of the incident, the applicant was at his residence. The co-accused approached him, requesting the use of his scooter for 15 minutes, and after some insistence, the applicant gave the scooter to co-accused, Ahsaam. When the co-accused did not return the scooter, the applicant attempted to contact him. The investigation is complete, and a charge sheet has been filed. The learned Counsel emphasise that aside from the co-accused's statement, there is no other incriminating material on record linking the applicant to the crime. The

offence was registered in 2021 and the applicant has not been arrested to date. Additionally, the applicant has no criminal antecedents.

4. On the other hand, Mr Shreeram Shirsat, the learned Special Public Prosecutor representing respondent No.1/ NCB, submits that the seized contraband falls under the category of a commercial quantity, and as a result, the rigours under Section 37 of the NDPS Act do not apply. Acting on specific information, a team of NCB, Mumbai, seized 62 grams of MD from the co-accused, who was en-route to deliver it near Veera Desai Industrial Estate Road, close to Innocent Virus Education, opposite ABCD shop, Andheri West, Mumbai. Upon being apprehended, the co-accused disclosed in the present of witnesses that the applicant was the supplier of the seized contraband. Despite receiving notices under Section 67 of the NDPS Act on three separate occasions, i.e. 14 October 2021, 29 October 2021, and 12 November 2021, the applicant did not submit a statement and failed to cooperate with the investigation. The prosecution made several attempts to locate the applicant, but he evaded the investigation and went into hiding. Even after the Sessions Court's rejected the applicant's pre-arrest bail, in November 2023, the applicant delayed

approaching this Court until June 2024 without offering any explanation for the delay, and intentionally avoiding participation in the investigation.

5. This Court has given anxious consideration to the rival submissions canvassed across the Bar. Upon perusing the records, it appears that during the investigation at the scene, the co-accused disclosed the applicant's name as a supplier in the presence of the panchas, as corroborated by the statements of the panch witnesses. Despite being issued notices on three separate occasions, the applicant failed to appear before the investigating officer. The alleged offence took place on 22 May 2021, and the applicant received the first notice on 14 October 2021. However, instead of cooperating with the investigation, the applicant chose to file the anticipatory bail application before the Sessions Court on 17 August 2023. After the Sessions Court rejected this anticipatory bail on 29 November 2023, the applicant again did not present himself to the investigating officer and only filed the present pre-arrest bail application in June 2024. This pattern of behaviour clearly indicates that the applicant has been evading the investigation. The gravity of the offence necessitates strict action to prevent its proliferation in society. The case against the applicant is not

solely based on the statement of the co-accused. There is sufficient material suggesting that the applicant was in contact with the co-accused from whom the contraband was seized. At the time of seizure, the co-accused named the applicant, and during the panchnama, the applicant's name was again disclosed as the supplier of the seized contraband. *Prima facie*, there is sufficient material indicating the applicant's involvement in the crime. The underground business of supplying, distributing, and selling contraband items is a serious crime against society and must be addressed with utmost severity.

6. It is a settled principle in law that the power to grant anticipatory bail is extraordinary. While it has been acknowledged in many instances that regular bail is considered general rule, the same cannot be said for anticipatory bail. The decision to grant anticipatory bail should be exercised with careful and prudent discretion by the Court, considering each case's specific circumstances. When exercising this power, the Court must exercise caution, as granting protection in serious case could potentially lead to miscarriage of justice or hinder investigation. All these aspects are highlighted in ***Shrikant***

Upadhyay and Ors Vs. State of Bihar and Anr.¹ .

7. Furthermore, in the case of ***Anarul Sk Vs. State of West Bengal²***, the Hon'ble Supreme Court made the following observations :

“4. The grant of anticipatory bail in cases involving Narcotic Drugs and Psychotropic Substances (NDPS) is a very serious issue. We, therefore, direct the State to consider as to whether it proposes to file an application for the cancellation of bail granted to the other co-accused.”

8. In light of the above, gravity of the offence and its broader implications for society, this Court is not inclined to exercise its discretion in favour of the applicant. The gravity of the crime warrants a cautious approach, as it not only impacts the individual but also poses significant concerns for the community at large. As a result, the application stands rejected.

[R.N. Laddha, J.]

1 2024 SCC OnLine SC 282.

2 Spl.Leave to Appeal (Cri) No.(S) 12621 of 2024 dated 19.09.2024.