

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

ANTICIPATORY BAIL APPLICATION NO.2077 OF 2024

Bashira Firoz Shaikh ..Applicant
Versus
The State of Maharashtra ..Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.2079 OF 2024**

Sahil Firoz Shaikh ..Applicant
Versus
The State of Maharashtra ..Respondent

Ms. Sana Khan a/w Subhash Hulyalkar, Anima Mishra & Jatin Chawda, for the Applicants in both Applications.

Ms. R. A. Ambekar, APP for the Respondent/State in ABA/2077/2024.

Mr. R. M. Pethe, APP for the Respondent/State in ABA/2079/2024.

CORAM : MANISH PITALE, J.

DATE : 14th AUGUST, 2024

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1. Heard learned counsel for the Applicants and learned APPs for the Respondent/State.

2. The Applicants herein are two of the three accused persons concerned with the registration of offences under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act"). The FIR is dated 03.07.2024 bearing No.0425

of 2024 registered with Bhosari Police Station, District Pune for the offences under Sections 8(c), 20(B)IIA and Section 29 of the NDPS Act.

3. The Applicant – Bashira Firoz Shaikh in Anticipatory Bail Application No.2077 of 2024 is the mother of Sahil Firoz Shaikh i.e. the Applicant in Anticipatory Bail Application No.2079 of 2024. The husband of Bashira Firoz Shaikh and father of Sahil Firoz Shaikh i.e. Firoz Shaikh is also an accused in the present case along with fourth accused person, named Sachin Yadav Adagale.

4. The allegation against the accused persons is that when co-accused Sachin Adagale was found in possession of 90 grams of Ganja and further investigation was undertaken, it led to the aforementioned co-accused persons.

5. Learned counsel for the Applicants submits that the name of Bashira Firoz Shaikh is not even mentioned in the FIR. It is only on the statement of co-accused Sachin Yadav Adagale, that her name is now shown as an accused. She has no criminal antecedents and she is a woman, who has no connection with the alleged activity. Hence, she deserves to be granted relief in the present proceedings.

6. As regards Sahil Firoz Shakh, it is submitted that he is an 18 year old boy, who has no connection with the aforesaid

activities, except for the statement of the co-accused Sachin Yadav Adagale. In that regard, reliance is placed on the order of the Supreme Court in the case of ***Seesh Singh @ Mor Vs. State of Punjab (order dated 02.12.2020 passed in Criminal Appeal No.822 of 2020)***, order of Punjab and Haryana High Court in the case of ***Jasbir Singh Vs. State of Punjab (order dated 05.06.2020 in CRM-M-14077-2020)*** and order dated 05.05.2022 passed by the Delhi High Court in the case of ***Md. Irshad Vs. State NCT of Delhi in Bail Application No.994 of 2022***. It is submitted that in all these cases, the Supreme Court, Punjab and Haryana High Court and Delhi High Court granted anticipatory bail on the ground that the only material linking the Applicants to the offences under the NDPS Act, were the statements of co-accused persons.

7. On the other hand, learned APPs appearing in the present Applications submitted that other than the statement of the co-accused person, there is material to indicate involvement of both the Applicants. Reliance is placed on the statement of the owner of the shed from where the contraband was recovered. It is submitted that the aforesaid statement clearly indicates the involvement of the Applicants as well as the husband of Bashira Firoz Shaikh. It is highlighted that the Applicant - Bashira Firoz Shaikh has two criminal antecedents. It is further submitted that the bank account statement recovered during the course of investigation shows a joint account in the name of the two accused - Firoz Shaikh and the Applicant - Bashira Firoz Shaikh, wherein specific amounts were

credited, which can be said to be relatable to the statement of co-accused - Sachin Yadav Adagale, as regards sale and purchase of the contraband. On this basis, the prayer made in the present Application is opposed.

8. Before dealing with the rival submissions, it is also necessary to note a specific submission made on behalf of the Applicants that the contraband recovered in the present case is of intermediate quantity and not commercial quantity. This is not seriously disputed by the learned APPs.

9. The position of law as regards the value of the statements of co-accused cannot be disputed. The orders passed by the Supreme Court, Punjab and Haryana High Court and Delhi High Court referred to herein-above, reiterate the said position of law. In the said cases, apart from the recovered contraband not being commercial quantity, the Courts found that it was only the statement of the co-accused that was sought to be used to link the accused with the offences in question, without any other material.

10. In the present case, apart from the statement of co-accused Sachin Yadav Adagale, this Court finds that the statement of the owner of the shed, from where the recovery of the contraband was made, which was recovered during the course of investigation, shows the involvement of the Applicants as well as the husband of Bashira Firoz Shaikh. Apart from this, the bank account statement

clearly shows in the joint account held by Bashira Firoz Shaikh and co-accused - Firoz Shaikh, amounts were transferred, which at this stage *prima-facie* can be said to be relatebale to sale and purchase of the contraband, as indicated in the statement of the co-accused person. This is not a case, where there is absolutely no material to link the Applicants with the activities in question. Apart from the statement of the accused persons, the aforesaid material is taken into consideration. Even though, the present case may involve intermediate quantity, to leniently consider such cases and to grant anticipatory bail would be against the object of the NDPS Act.

11. The Applicant – Bashira Firoz Shaikh has two criminal antecedents. Although, Applicant - Sahil Firoz Shaikh is said to be a young boy of 18 years and does not have any criminal antecedents, *prima-facie*, this Court finds sufficient material to show his involvement and in any case this is not a fit case for granting anticipatory bail.

12. Both these Applications are dismissed.

13. Needless to say, the observations made in this order are for the limited purpose of disposing of these Anticipatory Bail Applications.

(MANISH PITALE, J.)