

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

Anticipatory Bail Application No. 2798 of 2024

Mohammad Hasim Sheikh,
Age: 24 years, Adult Indian
Inhabitant of Goa, Occupation:
Business, having his residential
address at H.N. 484, Deulwade,
Chapora Vagator, Anjuna, North
Goa, Goa-403509.

... Applicant

Versus

1. The State of Maharashtra
to be served through the Preventive
Officer SPIB, Import-II, 2nd Floor,
Annex Building, NCH,
Ballard Estate, Mumbai – 400001

2. Union of India
Special Postal Intelligence Branch
(SPIB), Import-II)

... Respondents

Ms Rukhsana Khan, i/b. Harshit Gudhka, for the applicants.
Mr Amit A Palkar, a/w. Mr Arfan Sait, APP, for respondent
No.1/ State.

Ms Geeta Nayyar, Special Public Prosecutor for respondent
No.2/UOI.

**Coram: R.N. Laddha, J.
Date: 13 December 2024.**

P.C.:

Heard learned Counsel for the parties.

2. By the present application, the applicant seeks pre-arrest bail, in connection with Summons No.133/2024-25 dated 24 April 2024; and Summons dated 9 July 2024, under Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985, received from the Preventive Officer, SPIB, Import-II, Ballard Estate, Mumbai.

3. Ms Rukhsana Khan, the learned Counsel appearing on behalf of the applicants, submits that the applicant received the Summons related to the seizure of a packet with tracking No.CH-186387525-US at the Foreign Post Office in Mumbai. This packet contained 395 gms of plant parts, allegedly Marijuana, a psychotropic substance. The learned Counsel submits that the applicant has no connection with the seized packet and has been falsely implicated in this crime.

4. Ms Geeta Nayyar, the learned Special Public Prosecutor, representing respondent No.2, submits that the seized parcel originated from California and was addressed to the applicant. The applicant's address on the parcel was accurate. The Chemical Analyzer's report confirmed that the seized item is a psychotropic substance. Despite receiving notices under Section 67 of the NDPS Act on three separate occasions, i.e. 24 April 2024, 15 May 2024, and 12 November 2024, the applicant

failed to appear before the investigating officer and did not cooperate with the investigation. The investigating agency made several attempts to locate the applicant, but he evaded the investigation and went into hiding. Even after the Sessions Court rejected the applicant's pre-arrest bail, in August 2024, the applicant delayed approaching this Court until October 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 and perused the records.

6. Upon perusing the records, it appears that one parcel originating from California, containing 395 gms of Marijuana addressed to the applicant, was seized by the investigating agency. The Chemical Analyzer's report confirmed that the seized plant material was indeed Marijuana, a prohibited substance. Despite receiving notices on three occasions, i.e. 24 April 2024, 15 May 2024, and 12 November 2024, the applicant failed to submit a statement or appear before the investigating officer. The Sessions Court rejected the applicant's anticipatory bail application in August 2024, yet he only filed the present anticipatory bail application in October 2024. This conduct demonstrates a clear attempt to evade the investigation. In such circumstances, a thorough investigation is

necessary to determine the applicant's role. The gravity of the offence necessitates strict action to prevent proliferation of the contraband articles in society. The underground business of supplying, distributing, and selling contraband items is a serious crime against society and needs to be addressed with utmost severity.

7. 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. While exercising this power, the Court must exercise caution, as granting protection in serious cases could potentially lead to miscarriage of justice or hinder investigation. All these aspect are highlighted in ***Shrikant Upadhyay & Ors. vs. State of Bihar & Anr.***¹

8. Furthermore, in the case of ***Anarul Sk vs. State of West Bengal***², the Hon'ble Supreme Court observed as follows :

“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

¹ 2024 SCC OnLine SC 282.

² Spl.Leave to Appeal (Cri)No.(S)12621/2024 dt.19.09.2024.

an application for the cancellation of bail granted to other co-accused.”

9. In light of the above, gravity of the offence, its broader implications for society, and the fact that the investigation is at a nascent stage, this Court is not inclined to exercise its discretion in favour of the applicant. In cases of this nature, the custodial interrogation becomes essential to unearth the crime and the involved individuals. As a result, the application stands rejected.

[R.N. Laddha, J.]