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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1249 OF 2024

Mustafa Fakir Mohammad Shaikh .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Mr. Tohid Shaikh i/by Ms. Anjali Patil, Advocate for Applicant.
 - Mr. Dinesh J. Haldankar, APP for Respondent – State.
 - Mr. S.D. Patil, PSI – Shivaji Nagar Police Station, Mumbai present.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 08, 2025.

P.C.:

- 1.** Heard Mr. Shaikh, learned Advocate for Applicant and Mr. Haldankar, learned APP for Respondent – State.
- 2.** This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R.No.415 of 2023 registered with Shivaji Nagar Police Station for the offence punishable under Section 8(c) and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “**NDPS Act**”)
- 3.** In the present crime, Applicant is apprehended in possession of 15 grams of the alleged contraband Mephedrone (MD) which is admittedly intermediate quantity.
- 4.** The seizure panchnama is appended at page No.49 of the Application and on perusal of the same, it is *prima facie* seen that

Applicant was apprehended alongwith the alleged contraband as stated therein and certified by the panchas. However, prosecution has improved its case in the disclosure panchnama of the Applicant which is appended at page No.54 of the Application. When the said panchnama is *prima facie* seen, it is stated therein that Applicant has on his own volunteered to give a statement that the Applicant was apprehended alongwith 50 bottles of Codeine Phosphate Syrup. The seizure panchnama began on 10.05.2023 at 00:50 hours in the night and was completed on 10.05.2023 at 03:00 hours in the morning whereas disclosure panchnama was recorded and carried out on 10.05.2023 at 22:50 hours and upto 23:45 hours.

5. *Prima facie* if both the panchnamas are juxtaposed, it is seen that the seizure was completed in consonance with compliance of Rule 3 of the Narcotic Drugs & Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 as applicable and it does not mention any details of the alleged contraband namely Codeine Phosphate Syrup bottles having been recovered from the Applicant. The said originally recovered contraband being of intermediate quantity rigours of Section 37 would not apply.

6. That apart, learned Advocate for Applicant has also drawn my attention to the order passed by the Magistrate appended at page No.56 of the Application and the inventory panchnama alongwith

certification given by the Magistrate appended at page Nos.58 and 59 of the Application and would contend that the same is not in accordance with the provisions of Form No.5 of the NDPS Act read with Rule 8, 18(1) and 18(2) of the NDPS Rules as also under Section 52A(2) and (3) of the NDPS Act.

7. *Prima facie*, the aforementioned transgression having been noticed by the Court and distinction between the seizure panchnama and the disclosure panchnama being seen, case of the prosecution becomes a suspect. The original recovery of contraband is of intermediate quantity. Next if the appraisal notice under Section 50 of the NDPS Act at page No.53 of the Application is seen there is no endorsement of the Applicant in his own hand writing as mandated by the guidelines laid down by the Supreme Court in the case of ***Ranjan Kumar Chadha Vs. State of Himachal Pradesh***¹.

8. That apart long incarceration of the Applicant for the past for more than 1 year and 11 month pending trial also entails the Applicant for grant of bail. Also Applicant admittedly does not have any criminal antecedents.

9. In that view of the matter, Bail Application is allowed subject on the following terms and conditions:-

(i) Applicant is directed to be released on bail on

¹ 2023 SCC OnLine SC 1262

furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

- (ii) Applicant is permitted to furnish provisional cash bail of Rs.25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;
- (iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (vi) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically

exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;

(vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(viii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and

(ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

10. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

11. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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AJAY TRAMBAK
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Date: 2025.04.09
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