

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1269 OF 2024

Mohd. Bilal Abdul Kadir Shaikh .. Applicant

Versus

State Of Maharashtra .. Respondent

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- Ms. Kainat Sayed a/w Ms. Sumaiya Khan and Ms. Deepa Amati i/b Ms. Munira Palanpurwala Advocates for Applicant.
- Mr. Sukanta A. Karmakar, APP for State.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 18, 2025

P. C.:

1. Heard Ms. Sayed, learned Advocate for Applicant and Mr. Karmakar, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail in connection with Crime No. 2 of 2023 registered with DCB CID Unit VI for the offence punishable under Sections 8(c), 22 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. *Prima facie* dichotomy is noticed in the present case when the seizure panchanama and inventory panchanama is seen and compared with the CA Report received after forensic analysis of the alleged contraband. In the inventory panchanama and seizure panchanama the alleged contraband is described as Mephedrone (MD) whereas in the forensic analysis result the analysis states that alleged

contraband is Methamphetamine. Both the aforementioned contraband are classified under specific entries under the NDPS Act under entry No.238 F and 159 respectively and are different substances.

4. Considering aforesaid dichotomy the benefit of doubt as also suspect as to the validation of the alleged contraband is required to be given to the Applicant. There are other grounds also which are mentioned in the Application which need not be gone into in view of the above transgression which is *prima facie* noticed by the Court.

5. Though it is argued by the prosecution that this is not a serious violation and not necessary to be considered at this *prima facie* stage, such submission however cannot be countenanced. Provision under Section 37 of the NDPS Act are stringent therefore there cannot be any dereliction, deviation much less *prima facie* contradiction in complying with the mandatory provisions by prosecution while search, seizure, confiscation, sampling, inventory, storage, forensic analysis, certification by Magistrate as contemplated by the provisions of Section 42 and 52A of the NDPS Act. The Supreme Court in the case of ***Sarija Banu Alias Janarthani Alias Janani and Anr. vs. State through Inspector of Police***¹ while considering the violation Section 42 and relevance thereof has held that compliance of Section 42 is mandatory

¹ Criminal Appeal No.302 of 2004 decided on 26.02.2004

and it is a relevant fact required to be considered while considering a Bail Application. In the present case, alleged contraband seized u/s 42 is in complete contradiction to the contraband sent for C.A. testing. Hence, Applicant deserves enlargement on bail.

6. Bail Application is allowed subject to the following terms and conditions:-

(i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

(ii) 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;

(iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

(iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 01.00 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;

(v) 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;

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

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

(viii) 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.

7. 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.

8. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]