

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1309 OF 2024

Ahmed Ali Hasrat Ali Shah

Applicant/
.. Accused No.2

Versus

The State of Maharashtra

.. Respondent

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- Mr. Vishal Rankhambe a/w. Ms. Aparna Rankhambe, Mr. Chaitanya Bagul and Mr. Afsar Ansari, Advocates for Applicant.
- Ms. Mahalakshmi Ganapathy, APP for Respondent - the State of Maharashtra.
- PSI – S. D. Patil, Shivaji Nagar Police Station.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 11, 2025

P.C.:

1. Heard Mr. Rankhambe, learned Advocate for Applicant and Ms. Ganapathy, learned APP for Respondent - the State of Maharashtra.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking Bail in connection with C.R. No.49 of 2023 registered with Shivaji Nagar Police Station for offences punishable under Sections 8 (c) and 22 and 29 of the Narcotics and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

3. Applicant before me is arraigned as Accused No.2. Accused No.1 is a person called Mohd. Attar Hussain Samshad Husain Ansari. Accused No.3 is a Nigerian / foreign national. Accused No.1 was

apprehended on 12.01.2023 in a chance recovery by officials of Narcotics Control Bureau. His memorandum panchnama and statement was recorded on 12.01.2023 which is appended at page No.30 of the Application in which he did not disclose any information *qua* the present Applicant i.e. Accused No.2. His subsequent memorandum panchnama recorded on 19.01.2023 before the witnesses / panchas discloses that he alongwith the present Applicant and Accused No.3 was actively involved in trafficking of alleged contraband in question in Govandi area. Solely based on this statement Applicant – Accused No.2 was arrested on 19.01.2023 and incarcerated for a period of 2 years and 1 month.

4. The second dichotomy drawn to my attention by Mr. Rankhambe is order dated 16.02.2023 passed by learned Trial Court in Criminal Bail Application No.167 of 2023 of Accused No.1 which is appended at page No.108 of the Application. *Prima facie*, in the said order it is seen that case of prosecution as stated therein is that no arrest was made apart from Accused No.1. That order was passed on 16.02.2023 which is after the date of arrest of present Applicant before me and therefore it was duty of prosecution to bring to the notice of learned Trial Court which was not brought to its notice. That apart, when the Bail Application of the present Applicant was decided by Trial Court on 01.04.2023, order of which is appended at page No.112 it is seen that an incorrect date of arrest of Accused was noted in that

order and that date being 11.01.2023. Even if that date of arrest is considered, it was duty of prosecution to bring the same to notice of Trial Court when order dated 16.02.2023 of Accused No.1 was passed.

5. Another feature that Mr. Rankhambe would argue is that save and except the statement of Accused No.1 recorded on 19.01.2023, there is no conscious possession of alleged contraband in question recovered from Applicant. *Prima facie*, it is seen that save and except statement of co-Accused, there is no other material placed by prosecution on record for arrest of Applicant before me.

6. The Supreme Court in the case of *Tofan Singh Vs. State of Tamil Nadu*¹ has stated that it is settled law that statements recorded under Section 67 of the NDPS Act are not permissible in evidence and as such cannot be relied upon by prosecution as they are contrary to provisions of Sections 25 to 27 of the Indian Evidence Act, 1872.

7. The said decision of Supreme Court is reiterated in the case *Phundreimayum Yas Khan Vs. State (NCT of Delhi)*² and *Jasbir Singh Vs. Narcotics Control Bureau*³.

8. The aforesaid decisions of the Supreme Court clearly lay down the settled law that disclosure statement of co-accused which has not led to disclosure of any fact which is the case with the present

¹ (2021) 4 SCC 1

² 2023 SCC OnLine 135

³ (2023) SCC OnLine Del 134.

Applicant are not admissible under Section 27 of the NDPS Act. In view of the above, I am *prima facie* of the view that disclosure statement of Accused No.1 cannot be used against Applicant before me to further incarcerate him in prison.

9. In view of the above observations and case of the prosecution on basis of the available material on record being purely circumstantial and based solely on the disclosure statement of co-accused which is *per se* not admissible without any corroboration, the Application deserves to be allowed.

10. For the aforementioned reasons, Applicant is entitled to be enlarged on bail subject to following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount;
- (ii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 a.m. to 12:00 p.m. for the first three months and thereafter as and when called;
- (iii) 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;

- (iv) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (v) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;
- (vi) Any infraction of the above conditions shall entail the prosecution to seek cancellation of this order.

11. The aforesaid observations are *prima facie* on the basis of record of the case which has been argued before me and is an expression of opinion by this Court only for the purpose of enlargement of Applicant on bail and shall not influence the trial in the present case.

12. Bail Application stand allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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