

Ajay

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

CRIMINAL BAIL APPLICATION NO. 1657 OF 2024

Imran Mohd Rashid Shaha @ Papa Passport .. Applicant

Versus

The State of Maharashtra .. Respondent

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- Ms. Zehra Charania a/w Mr. Ayaz Khan, Mr. Dilip Mishra and Ms. Mallika Sharma , Advocates for Applicant.
- Mr. R.M. Pethe, APP for Respondent – State.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 16, 2025.

P.C.:

1. This is an Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Regular Bail in connection with C.R.No. 32 of 2023 registered with Anti Narcotic Cell, Ghatkopar Unit for offences punishable under Sections 8 (c) and 22 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'). Applicant is arrested on 21.04.2023 and he is incarcerated for 1 year 11 months 13 days.

2. It is prosecution case that during patrolling on 20.04.2023 at about 19:00 the raiding party reached near Raheja Bridge, Dharavi Mahim Road, they found Applicant carrying a black plastic bag behaving suspiciously. Raiding party approached him and questioned him about his details, he gave evasive answers. Two panchas were brought and were appraised of the search, seizure and arrest

procedure under the NDPS Act, panch witnesses conducted a search of the police personnel. Applicant was appraised of his right under Section 50 of the NDPS Act. On search, two ziplock bags with contraband; viz, 47 grams and 25 grams of Mephedrone (commonly known as 'MD') was found. In total 72 grams of the alleged contraband was seized, sealed and marked as 'A' and 'B' and crime was registered under Sections 8 (c) and 22 (c) of the NDPS Act.

3. Ms. Charania, learned Advocate for Applicant would submit that Applicant is falsely implicated in the present crime. She would submit that there is a clear dichotomy in the description of the alleged contraband recovered and tested. She would draw my attention to FIR dated 21.04.2023 appended at page No. 32, Seizure Panchanama dated 20.4.2023 appended at page No. 25 and Forwarding Memo dated 04.05.2023 appended at page No. 58 which records recovery of 2 zip-lock packets of 47 grams and 25 grams each containing 'भुरकट रंगाची दाणेदार बारीक खडे मिश्रीत पावडर' (*Brownish-colored, granular, fine-grained powder mixed with pebbles*). She would draw my attention to the CA Examination Report dated 06.10.2023 appended at page No. 96 wherein on perusal it is seen that sample marked as 'A-1' is described as 'white powder' and sample marked as 'B-1' is described as 'off-white powder' thereby casting a doubt on the prosecution case. She has relied upon the definition and translation of the word 'भुरकट' on the Google page of Marathi to English translation to mean 'brown-

colored, granular, fine-grained powder mixed with pebbles' in support of her above proposition.

3.1. She would submit that there is non-compliance of Section 52A of the NDPS Act on face of the record as Certification by Magistrate under Section 52A(3) of NDPS Act is in continuity with the Inventory Panchanama itself appended at page No. 83 which is not in consonance with the statutory provisions of Section 52A (2), 52A(3), Rules 8 and 18 of the Narcotics Drugs & Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 and in Form 5 as prescribed. Hence she would submit that non-compliance of mandatory provisions vitiates the prosecution case and recovery thereby casting a doubt on prosecution case

3.2. She would submit that Applicant runs a grocery store having deep roots in the Society. She would submit that Applicant is arrested on 21.04.2023 and he is incarcerated for 1 year 11 months 13 days, pending trial. Investigation being completed, chargesheet being filed, commencement and completion of trial in the near foreseeable future is doubtful. Hence she would urge the Court to allow the Application.

4. *PER CONTRA*, Mr. Pethe, learned APP would vehemently oppose grant of bail to Applicant. He would submit that offence is of a serious nature as recovery of alleged contraband is of commercial quantity. He would submit that bar of Section 37 of NDPS Act has to

be overcome by Applicant. He would submit that Court while granting bail must be fully satisfied that there are reasonable grounds for believing that Applicant is not guilty of such offence and he is not likely to commit any offence while on bail. He would submit that such offences are offences against Society at large and will have to be viewed by Court very strictly without showing any leniency. He would submit that Applicant has 4 criminal antecedents to his discredit hence this Court should be cautious while deciding the present Bail Application . Furthermore, there exists a likelihood of Applicant tampering with evidence and influencing witnesses if released on bail. On the issue of transgression and description appearing differently as argued by the Advocate of Applicant, he has placed on record copy of Aryabhushan School dictionary to show the translation and meaning of the word 'भुरकट' to mean 'dusky white' and not 'brown' as argued. Hence he would submit that there is no substance in that submission regarding difference in description of the contraband seized and it is merely a diversionary argument from the main issue. Hence he would urge the Court to reject the Bail Application.

5. I have heard the learned Advocates at the bar and perused the record with the able assistance of the learned Advocates.

6. *Prima facie* on perusal of record it is seen that Applicant was apprehended at the time of patrolling however *prima facie* there is a

clear transgression of statutory provisions and procedure. Section 52A (3) of the NDPS Act contemplates allowing the Application by Magistrate by issuing the Certificate in Form 5 as per Rules 8 and 18 of the Narcotics Drugs & Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. Form 5 specifically lists the Application to be made and certificate to be given thereon by the Magistrate together. However *prima facie* on perusal of the Certificate issued it is seen that it is in continuity with the Inventory Panchanama itself appended at page No. 83 which is not in consonance with the statutory procedure which is fatal to the prosecution case at the *prima facie* stage.

7. The dichotomy in description of the contraband can be evinced from the FIR appended at page No. 32 and Seizure panchanama appended at page No. 25 juxtaposed with the Chemical Analysis Examination Report at page No. 96 of the Application. *Prima facie* on perusal of the record it is seen that in the Seizure panchanama it is described as ‘भुरकट रंगाची दाणेदार बारीक खडे मिश्रीत पावडर’ - Brownish-colored, granular, fine-grained powder mixed with pebbles however on *prima facie* perusal of its description in the Chemical Analysis Examination Report it is described as ‘white powder’ and ‘off-white powder’. The aforesaid *prima facie* dichotomy between the colour and texture of the contraband is *prima facie* noticed from the prosecution documents. The transgression of Sections 43 and 52A is therefore

prima facie observed which would go to the root of the matter entitling benefit of the same to be given to the Applicant. Oxford English Dictionary in its 11th Edition defines 'off-white' as white with a grey or yellowish tinge and 'brown' as of a colour produced by mixing red, yellow, and blue, as of dark wood or rich, soil.

8. Attention is drawn to the decisions of this Court in the case of *Zadi Elayee Sande & Anr. Vs. The State of Maharashtra*¹ (Coram : Bharati Dangre, J.) and *Jahangir Abdul Rehman Shaikh Vs. The State of Maharashtra*² (Coram : Manish Pitale, J.) where the Court in similarly placed circumstances held in favour of the Accused considering glaring discrepancies in description of the sample / contraband.

9. In so far as Section 52A of the NDPS Act is concerned, *prima facie* the Chemical Analysis Report received pursuant to the forensic examination of the alleged contraband pertains to a differently described substance than the one that is seized. *Prima facie* when the aforesaid facts are seen, Applicant is entitled to be released on bail for procedural mishap which is *prima facie* evident. Needless to state that complicity of Applicant can be proved at the stage of trial. Applicant's incarceration for 1 year 11 months 13 days, pending trial further persuades me to consider the Applicant's case, as there is no answer

¹ BA. 2796 of 2021, decided on 04.10.2022.

² BA. 1589 of 2024, decided on 26.06.2024.

from the prosecution for the incarceration, pending trial and whether the trial would ever start or for that matter would get completed in the near foreseeable future, thus jeopardizing the right of speedy trial and personal liberty as enshrined under Article 21 of the Constitution of India.

10. In the landmark judgement of *Maneka Gandhi Vs. Union of India*³, the Supreme Court held that the right to life and personal liberty under Article 21 is not limited to mere physical existence but includes the right to live with dignity. The court emphasized that the procedure established by law must be fair, just, and reasonable, and it cannot be arbitrary, oppressive, or unreasonable.

11. In the case of *Hussainara Khatoon Vs. Home Secy., State of Bihar*⁴ the Supreme Court held as under:-

Now obviously procedure prescribed by law for depriving a person of liberty cannot be “reasonable, fair or just” unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as “reasonable, fair or just” and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21.”

3 1978 (1) SCC 248

4 (1980) 1 SCC 81

12. The Supreme Court in the case of *Shaheen Welfare Association Vs. Union Of India*⁵ dealing with a Public Interest Litigation seeking relief for under-trial prisoners charged under the Terrorist and Disruptive Activities (Prevention) Act, 1987 due to gross delay in disposal of cases qua Article 21 of the Constitution of India held as under:-

“10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh’s case (supra), on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.”

13. At this juncture I deem it appropriate to list certain observations of the Supreme Court shedding light on concerns underlying the “Right to speedy trial” from the point of view of an accused in custody whose liberty is affected. In the case of *Abdul Rehman Antulay & Ors. Vs. R.S. Nayak & Anr.*⁶ the Supreme Court held as under:-

“86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:

(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right

⁵ 1996 SCC (2) 616

⁶ 1992 (1) SCC 225

of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the Right to speedy trial from the point of view of the accused are:

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

(4) – (11) -----X-----” (emphasis supplied)

14. In view of the aforesaid *prima facie* observations and the judicial pronouncements, the Bail Application stands allowed on 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) 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) 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 Monday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Monday 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 any of the witnesses or tamper with the evidence in any manner;
- (viii) Before his actual release from jail, Applicant shall furnish their address where he proposes to reside after his release from jail, to the concerned Police Station and also to the Trial Court; 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.

15. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall be adjudicated on the basis of the evidence led by the parties uninfluenced by the present order and strictly in accordance with law.

16. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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