

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3506 OF 2024

Shaikh Aslam Shaikh Ismail	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

WITH
BAIL APPLICATION NO.1742 OF 2024

Firoz Imammuddin Shaikh	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Ms. Anima Mishra a/w. Mr. Anuj Singh, Advocates for Applicant in Bail Application No.3506 of 2025.
 - Mr. Hitendra J. Dedhia, APP for Respondent in Bail Application No.3506 of 2025.
 - Mr. Rohan Chauhan a/w. Mr. Kushal Mor, Advocates for Applicant in Bail Application No.1742 of 2024.
 - Mr. Balraj B. Kulkarni, APP for Respondent in Bail Application No.1742 of 2024.
 - PSI – M. R. Indrekar, Bhiwandi Police Station in Bail Application No.1742 of 2024.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 03, 2025

P.C.:

1. Heard Ms. Mishra, learned Advocate for Applicant in Bail Application No.3506 of 2024; Mr. Dedhia, learned APP for Respondent in Bail Application No.3506 of 2024; Mr. Chauhan, learned Advocate for Applicant in Bail Application No.1742 of 2024; and Mr. Kulkarni, learned APP for Respondent in Bail Application No. 1742 of 2024.

2. These are Applications under Section 439 of Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') seeking Bail in connection with C.R. No.397 of 2021 dated 15.10.2021 registered with Bhiwandi Taluka Police Station for offences punishable under Sections 8(c), 20(b)(ii)(C) of the Narcotics and Psychotropic Substances Act, 1985 (for short '**NDPS Act**').

3. Common order is passed in both Bail Applications since Applicants are arraigned as Accused Nos.1 and 4 in the same crime. They are arrested in offences punishable under provisions of NDPS Act. Accused No.1 was arrested on 20.10.2021 whereas Accused No.4 was arrested on 19.08.2022. There are total 5 Accused in the present case.

4. While on patrolling duty, one Bolero pick-up vehicle and one Swift car were intercepted on suspicion and on sighting police personnel, occupants of the said vehicles ran away from the spot. The search of the vehicles led to investigation and seizure of 254 kilogram of alleged contraband namely ganja from the Bolero vehicle and 32 kilograms of alleged contraband ganja from Swift Car. From further investigation by prosecution it was found out that Bolero vehicle belonged to Accused No.2. Accused Nos.1 and 2 were arrested and in their disclosure statements given in the enquiry under Section 67 of the NDPS Act conducted by NDPS Officers they disclosed that their accomplices were Accused Nos.3, 4 and 5. In so far as Accused No.4 is

concerned, it was disclosed that he was supplier of the alleged contraband.

5. Ms. Mishra and Mr. Chauhan, learned Advocates appearing on behalf of Accused Nos.1 and 4 would persuade the Court to consider the common ground on behalf of Applicants for consideration of Bail Applications. Both the learned Advocates would submit that indictment and arrest of both Applicants is solely based on disclosure statement recorded by NDPS Officers of Accused No.2 indicting the present Applicants. Both the learned Advocates would submit that such a statement cannot be considered by the Court at the stage of bail in as much as it is a statement made in enquiry under Section 67 of the NDPS Act and is hit by provisions of Sections 25 and 27 of the Indian Evidence Act, 1872.

6. Both the learned Advocates would submit in tandem that apart from the statement of co-accused persons, prosecution has not placed on record any incriminating material corroborating involvement of Applicants or showing complicity of Applicants in the crime. They would submit that neither Call Detail Records nor any CCTV footage has been placed on record to show nexus of Applicants to the present crime. Infact Mr. Chauhan would argue that Accused No.1 was not even present at the time when the vehicles were intercepted at the incident spot.

7. *PER CONTRA*, Mr. Dedhia and Mr. Kulkarni, learned APPs appearing in the aforesaid Bail Applications in their usual fairness inform the Court that in so far trial is concerned, charge has not been framed as yet and trial has not commenced. Mr. Dedhia, learned APP would submit that in so far Accused No.4 is concerned, he has eight antecedents out of which two are under NDPS Act and six are under the Indian Penal Code, 1860. He would persuade the Court to consider the fact that though his indictment is on the basis of statement of co-accused persons his Bail Application should be rejected since in view of his background and conduct he is likely to reoffend and be a menace to the Society.

8. Mr. Kulkarni, learned APP would submit that in so far Accused No.1 is concerned, though he has no antecedents but his Nivedan Panchnama appended at page No.48 of Application would *prima facie* show that he was one of the occupant of the two vehicles which were intercepted with the alleged contraband since he has identified the incident spot during enquiry. He in his usual fairness would inform the Court that Accused No.1 does not have any antecedents.

9. I have heard Ms. Mishra, learned Advocate for Applicant in Bail Application No.3506 of 2024; Mr. Dedhia, learned APP for Respondent in Bail Application No.3506 of 2024; Mr. Chauhan,

learned Advocate for Applicant in Bail Application No.1742 of 2024; and Mr. Kulkarni, learned APP for Respondent in Bail Application No. 1742 of 2024 and perused the records of the case. Submissions made by them have received due consideration of this Court.

10. As delineated hereinabove Accused No.1 is incarcerated in prison since 20.10.2021 whereas Accused No.4 has been subsequently arrested on 19.08.2022. The period spent by Applicants – Accused in prison without charge been framed and trial not commenced itself makes a ground for considering the Applications.

11. That apart, no recovery of any alleged contraband from conscious possession of Applicants also persuades the Court to consider their Applications. Considering that indictment is under offences punishable under provisions of NDPS Act, it is expected of the prosecution to complete the trial as expeditiously as possible but in the present case, it is seen that even charge has not been framed till date.

12. On *prima facie* consideration of submissions advanced by Ms. Mishra and Mr. Chauhan, learned Advocates for Applicants, it is seen that their indictment is solely based on statement of co-accused persons namely Accused No.2 who is also owner of one of the two vehicles which were confiscated. The statement being a statement recorded in enquiry under Section 67 of the NDPS Act is inadmissible to be taken into account at the interim stage unless the prosecution

comes up with substantive incriminating material to corroborate the complicity of Applicants in the crime *prima facie*. That is not seen by the Court.

13. Such a statement recorded under Section 67 of the NDPS Act is covered by decision of the Supreme Court in the case of *Tofan Singh Vs. State of Tamil Nadu*¹ wherein Supreme Court held that statements recorded by NDPS officers could be construed as statements to police officers given their duties and responsibilities in preventing and detecting crime under the NDPS Act. It held that right against self-incrimination and right to privacy under Article 20(3) and Article 21 of the Constitution apply to confessions recorded under Section 67 of the NDPS Act. It also held that officers under the NDPS Act should be construed as 'police officers' under Section 25 of the Indian Evidence Act to prevent coercion in recording confessions and that confessions made before such officers are inadmissible as evidence to protect fundamental rights under Articles 20(3) and 21 of the Constitution of India.

14. In view of the aforesaid *prima facie* observations, Applicants have made out case for grant of bail. Both Applications are therefore allowed on the following terms and conditions:-

(i) Both Applicants are directed to be released on bail on

¹ (2021) 4 SCC 1.

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

- (ii) Before their actual release from jail, Applicants shall furnish their addresses where they proposes to reside after their release from jail to the concerned Police Station and also to the trial Court;
- (iii) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;
- (iv) Applicants shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark their 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 they do so, it will entitle the prosecution to apply for cancellation of this order;
- (vi) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;

(vii) Applicants shall not influence 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.

15. It is clarified that the observations made in this order are limited for the purpose of granting Bail only. They shall not be construed as observations on merit. The trial shall be adjudicated on the strength of evidence led by parties and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

16. Bail Application No.3506 of 2024 and Bail Application No.1742 of 2024 are allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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