

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1784 OF 2024

Sachin Balkrishna Shetye

.. Applicant

Versus

The State of Maharashtra

.. Respondent

.....

- Mr. Dilip Mishra a/w Mr. Ayaz Khan, Ms. Zehra Charania & Ms. Mallika Sharma for Applicant
- Ms. Shilpa K. Gajare-Dhumal, APP for State

.....

CORAM : MILIND N. JADHAV, J.**DATE : JANUARY 30, 2025****P. C.:**

1. Heard Mr. Mishra, learned Advocate for Applicant and Ms. Gajare-Dhumal, learned APP for State.

2. Applicant - accused No. 2 has filed the present Application for regular bail in connection with Crime No. 75/2023 registered with Anti Narcotic Cell, Bandra Unit pending as Special Case No. 489/2024 (NDPS) for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs And Psychotropic Substances, Act, 1985 (for short, "**NDPS Act**").

3. Applicant is arraigned as accused No. 2 in a chance recovery wherein 30 grams of Mephedrone (MD) has been recovered from him. Allegation of the prosecution is that he was found along with accused No. 1 from whom 200 gms of MD (contraband) has been seized

outside his house. Both the accused were apprehended while standing outside their house near Snehasagar SRA Society, Building No. 7, Sagbaug, Marol, Andheri (E), Mumbai 400 059 on 25.08.2023 at about 23:05 Hrs.

4. Prosecution is heavily relying upon the CDR conversation reports which are appended at page No. 264 of the Application wherein it is the case of the prosecution that both the Applicants were in constant touch with each other prior to and after they were apprehended. *Prima facie* this cannot be true since after they were apprehended, they could not have been in conversation with each other on phone.

5. In so far as the prior communication between the two accused is concerned, learned APP has drawn my attention to the period of three months prior in point of time and would argue that there were more than 214 calls exchanged between them and that would show the complicity of the present Applicant in the crime considering that he was found in custody of an intermediate quantity of the contraband.

6. That apart there is another dichotomy which has been noticed by the Court. In the seizure panchnama dated 26.08.2023 the alleged contraband is described as a Brown Coloured Powder which can be seen from page Nos. 40-41 of the Application whereas the CA report

appended at page No. 72 reveals that the sample which was tested of the alleged contraband was of off-white crystalline colour powder.

7. Naturally the Applicant before me has approached this Court for showing *prima facie* non-compliance of the provisions of Section 50 of the NDPS Act on the above grounds as it would then be a suspect as to which contraband was recovered and which was tested. Though there are several grounds taken with respect to the delay and the discrepancy in getting the samples tested under Section 52-A as also with respect to the letters not bearing the requisite endorsement of the independent gazetted officer or the Magistrate those may not be material for the decision at present.

8. Learned APP Ms. Gajare-Dhumal has vehemently argued that prosecution has *prima facie* established complicity of the Applicant alongwith the co-accused on the basis of the CDR report placed before the Court.

9. However considering the above non-compliance of specific provisions of the NDPS Act, *prima facie*, and rigour of Section 37 not being applicable to the present case as the quantity seized from Applicant is intermediate quantity of contraband, I am inclined to release the Applicant on bail. Applicant therefore stands released on bail on the following terms and conditions:-

- (i) Applicant is directed to be released on bail in connection with C.R. No. 75/2023 on furnishing PR. Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount;
- (ii) Applicant shall report to the concerned Investigating Officer 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 leave the State of Maharashtra without prior permission of the Trial Court;
- (v) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (vi) 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;
- (vii) Any infraction of the above conditions shall entail cancellation of this order.

10. It is clarified that the 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.

11. Bail Application stands allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2025.01.30
14:49:58
+0530