

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2316 OF 2024

Shahrukh Daulat Khan

.. Applicant

Versus

The State Of Maharashtra

.. Respondent

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- Ms. Ashwini Achari a/w Mr. Taraq Sayed and Mr. Anish Pareira, Advocates for Applicant.
- Ms. Megha S. Bajoria, APP for State.
- Mr. M.B. Parab, PSI, Crime Branch, Thane.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 10, 2025

P.C.:

1. Heard Ms. Achari, learned Advocate for Applicant and Ms. Bajoria, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail in connection with Crime No.218 of 203 registered with Badlapur Police Station for the offences punishable under Sections 8(c) r/w 20 (B) (ii) (c) and 29 of the NDPS Act, 1985. Applicant herein is arrayed and indicted as Accused No.1. Date of apprehending the applicant is 25.08.2023.

3. In all three accused have been apprehended namely Accused No.1 the present Applicant before me, Accused No.2 Afsar Jalal Khan and Accused No.3 Dilip Rajendra Gupta. Accused No.3 has

recorded his statement on 30.08.2023 which is appended at page No.119 of the Application. Pursuant to recording of statement he expired.

3.1. However, learned Advocate appearing for Applicant would draw my attention to his statement and would argue that nexus of Applicant with the persons concerned with the transport of the alleged contraband having been concealed the same in the Innova Car can be borne out from the said statement clearly. She would submit that insofar as the Applicant is concerned, it is categorically stated by the Accused No.3 herein that for the purpose of interstate transport of contraband the other accused would always be on lookout for drivers and accordingly the name and mobile number of the Applicant was obtained by them after making some inquiry.

3.2. That apart she would submit that Applicant was a freelance taxi driver and did not have the knowledge of the crime. However, said fact is refuted by learned APP. On the issue of merits and defence insofar as seizure is concerned learned Advocate for Applicant would submit that there is clear discrepancy in recording panchanama and certificate issued by learned Magistrate concerning the inventory panchanama. She would submit that if seizure panchanama at Page No.61 is read at page No.64, it would show total 59 bundles i.e. 89.490 Kg of alleged contraband Ganja being recovered

from the Innova car and same was regrouped in 5 groups and Exhibited as viz. A, B, C, D and E. However, while drawing my attention to the inventory panchanama she would submit that there is no record whatsoever of the regrouping of the said 5 bags and the magistrate has in fact recorded the alleged contraband to be 59 bundles which were originally recovered.

4. Ms. Bajoria, learned APP for State would vehemently contend that reading of the statement of accused No.3 which is relied upon by the applicant itself would show that when the said Innova car required repairs, at that time in the middle of the night they had stopped for repairs and had sent car for repairs as also for the loading and at that time the presence of the applicant along with other drivers in the Innova car as also other accused could not be ruled out. She would contend that applicant was therefore in complete knowhow and knowledge of what was concealed in the car and therefore he cannot feign ignorance. The statement made by learned APP aligns on the ground of presumption as on reading said statement at Page No.120 it is not definitely conclusive as to whether the applicant was present when Accused No.3 had discussed about the alleged contraband having been concealed in the Innova Car. No money trail has been established with respect to the alleged contraband *qua* the applicant in question.

4.1. Learned APP would also persuade the Court to consider the fact that Applicant is not a native of Maharashtra and therefore there is every likelihood of re-offending if he is released on bail. In that view of the matter appropriate directions can be passed with respect to local sureties.

5. In view of the above observations, applicant's role having been clearly stated, the applicant has made out a case for grant of bail. His further incarceration is not required. Hence, 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 local 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 am to 12:00 pm 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 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.

6. 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 merits of the case.

7. In view of the above directions, Bail Application stands allowed and disposed.