

Ajay

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

CRIMINAL BAIL APPLICATION NO. 2568 OF 2024

Mohammad Osama Abdul Kadar Madiya	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Ayaz Khan a/w. Ms. Zehra Charania and Ms. Mallika Sharma, Advocates for Applicant.
 - Mr. R.M. Pethe, APP for Respondent – State.
 - Mr. Ajay M. Birajdar, API – DCB, CID Unit – IV, Mumbai present.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 13, 2025.

P.C.:

1. Heard Mr. Khan, learned Advocate for Applicant and Mr. Pethe, learned APP for Respondent – State.

2. This Application is filed by the Applicant seeking regular bail in C.R. No.28 of 2023 registered with Dongri Police Station for offences punishable under Sections 8(c), 20(b), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”).

3. There are in all 4 Accused in the crime. Present Applicant is arraigned as Accused No.1. Whilst patrolling during chance recovery Applicant was apprehended on suspicion and found to be in possession of 61 grams of alleged contraband namely MD which is admittedly

commercial quantity. He was apprehended and arrested at 03:45 hours on 28.04.2023 and panchanama was prepared at 05:00 hours subsequent to which FIR was registered. Applicant disclosed the name of Accused No.2 being the supplier and seller of the alleged contraband. Two days later on 30.04.2023 prosecution laid a trap for Accused No.2 when he visited Nagpada Junction, Mumbai on information. Accused No.2 was apprehended alongwith Accused Nos.3 and 4 together. 55 grams of alleged contraband MD was recovered from Accused No.2 whereas 3 grams of the alleged contraband each namely MD was recovered from Accused Nos.3 and 4. They were arrested by following the due process of law. Various statements were recorded and chargesheet has been filed. Charge has not been framed and the case is pending trial. Applicant is in custody for more than 22 months.

4. In the meanwhile, on 28.02.2024 Accused Nos.3 and 4 were granted bail whereas by order dated 12.04.2024 Accused No.2 was granted bail on the ground of violation of provisions of Section 50 of the NDPS Act.

5. Mr. Khan, learned Advocate for Applicant would submit that the principal ground for seeking bail apart from long incarceration of the Applicant of more than 22 months and no certainty of the trial being commenced or would be completed in the near foreseeable

future, there is non-compliance of the provisions of Section 50 of the NDPS Act in the case of present Applicant also. That apart, he would submit that there is gross violation of the mandatory provisions of Section 52A of the NDPS Act in view of the fact that Applicant was apprehended at 03:45 hours in the midnight after sunset and before sunrise and the panchnama was completed before 05:00 hours and no authorization was obtained by the prosecution for search of the Applicant and consequential arrest of the Applicant.

5.1. He would submit that in the present case the inventory panchnama appended at page No.102 of the Application itself records certification by the Magistrate under sub-section 3 of Section 52A of the NDPS Act. He would submit that the said certificate is dated 16.06.2023 and is in conjunction with the inventory panchnama itself and not in consonance with Form – 5 to be issued by the Magistrate after certifying the Application. He would submit that Application made by the Authorized Officer / Investigating Officer to the Magistrate is conspicuously absent and missing from the said certificate issued by the Magistrate. He would submit that provisions of Section 52A(2) envisage preparation of inventory panchnama and making of an Application to the Magistrate for complying with the procedure stated therein and only after the said Application is received and the contents of the inventory panchnama are verified by the Magistrate, the said Application is required to be allowed under Section 52A(3) of

the NDPS Act.

5.2. He would submit that for undertaking this exercise, provisions of Section 52A are required to be read in consonance with Rule 8 and 18(1) and (2) of the Narcotics Drugs & Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 which have been enacted on 23.12.2022.

5.3. In that view of the matter, he would submit that the Certificate issued on 16.06.2023 admittedly is contrary to the provisions of the Statute and Rules and as such the recovery as also case of the prosecution stands vitiated under the NDPS Act and becomes doubtful. He would submit that transgression of the provisions of the NDPS Act is impermissible when the statutory Rules prescribe issuance of the Certificate on the basis of the Application to be made by the Competent Authority / Investigating Officer to the Magistrate.

5.4. That apart, he would also persuade me to consider the arrest / Court surrender form of the Applicant which mentions the information of the grounds of arrest conveyed to the Applicant at 11:45 on 28.04.2023 when the seizure panchnama itself has commenced at 03:00 hours and ended at 05:00 hours on the intervening night of 27.04.2023 and 28.04.2023 this *prima facie* appears to be a very strong circumstance for grant of bail.

6. The aforesaid dichotomy is clearly seen when the FIR appended at page No.29 of the Application itself is read wherein it is categorically stated that the Applicant was apprehended and arrested at 03:00 hours. The FIR is appended at page No.29 of the Application whereas the same FIR in Column No.11 of its format states that the time of arrest as 11:45 on 28.04.2023. There is a clear apparent dichotomy in the time of arrest which is recorded as the Applicant could not have been arrested prior to commencement of the seizure panchnama which admittedly according to the prosecution case ended at 05:00 hours in the morning and only after which the FIR was registered.

7. *PER CONTRA*, Mr. Pethe, learned APP for Respondent – State would persuade me not to consider the technical issues argued by the Advocate for Applicant and consider the fact that Applicant was arrested in conscious possession of commercial quantity of the alleged contraband. He would submit that any observation on the issues argued by Mr. Khan would amount to a mini trial at the bail stage and it should not be done by the Court. On long incarceration of 22 months pending trial he would leave it to the Court. He would therefore submit that rigours of Section 37 of the NDPS Act require the Applicant to *prima facie* show that there are reasonable grounds to believe that he is not guilty of the alleged offence and in the present case Applicant has not overcome that hurdle. He would submit that in that view there

is a reasonable belief that Applicant has committed offence and therefore he is not entitled to bail.

8. I have heard the learned Advocates at the bar and perused the record of the case.

9. Admittedly Applicant is incarcerated for more than 22 months pending trial. Two specific arguments made by Mr. Khan regarding transgression of the procedure under Section 50 and 52A as also the discrepancy apparent on the face of record regarding lodging of the FIR at 11:45 hours when the Applicant was arrested at 03:00 hours in a chance recovery while patrolling on the same night clearly go to the root of the matter on *prima facie* consideration.

10. The aforesaid case is also clearly covered by the recent decision of this Court in the case of ***Chandrabhan Janardhan Yadav Vs. State of Maharashtra*** passed in Criminal Bail Application No.2254 of 2024 and companion Applications dated 04.03.2025.

11. Inherent *prima facie* infirmity in the prosecution case is clearly noticed when the aforesaid dichotomy is seen from the FIR itself as also the inventory panchnama which are referred to while recording the submissions of Mr. Khan. Returning an opinion on this ground cannot amount to a mini trial. Hence on *prima facie* consideration of the material on record discussed above and the nature of the offence as also the gravity of offence, I am inclined to release the

Applicant on bail.

12. In view of my above *prima facie* observations, Bail Application is allowed in the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond of Rs.50,000/- with one or two sureties of the like amount;
- (ii) Applicant shall report to the Investigating Officer of concerned Police Station as and when called by the Investigating Officer;
- (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 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, as applicable; and

(vii) Any infraction of the conditions shall entail prosecution to apply for cancellation of bail granted to the Applicant.

13. 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 proceed uninfluenced by the present order.

14. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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