

Amberkar

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

CRIMINAL BAIL APPLICATION NO. 2701 OF 2024

Shikha Munna Shukla

.. Applicant

Versus

Union of India and Anr.

.. Respondents

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- Ms. Sherali S. Khan a/w Nadeem Shaikh, Advocates for Applicant.
- Mr. Madhukar P. Dalvi a/w Mr. Shivam Dube, Advocates for Respondent No.1 – Union of India.
- Ms. Megha S. Bajoria, APP for Respondent No.2 – State.

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CORAM : MILIND N. JADHAV, J.**DATE : MARCH 07, 2025****P. C.:**

1. This is an Application filed under Section 439 of CrPC¹ seeking regular bail in connection with F.NO.NCB/MZU/C.R.06/2023 (now Special Case 1717/2023 arising out of Crime No.06 of 2023 registered with NCB Zonal Unit, Mumbai) for offences punishable under Sections 8(c), 22(c), 23(c), 27A, 28 and 29 of the NDPS² Act.

2. The case of the prosecution is that the Respondent No.1, based on a secret information intercepted a parcel at the FPO³ addressed to Applicant – Accused No.2. The parcel was later found to contain 60 gm of MDMA⁴. After drawing samples, the authorities proceeded to the

1 The Code of Criminal Procedure, 1973.

2 The Narcotic Drugs and Psychotropic Substances Act, 1985.

3 Foreign Post Office

4 A Narcotic Drug and Psychotropic Substance listed at Sr. No. 134 of the Table as per clause (vii) of Section 2 of the NDPS Act having 'small quantity' as 0.5 gm and 'commercial quantity' as 10 gm.

address mentioned on the parcel where the Applicant, in her Section 67 statement revealed that the parcel was booked by Accused No.1 who is her boyfriend. Section 67 statement of Accused No.1 revealed that he had booked the said parcel containing MDMA for one of his friends. The screenshots relied upon by Respondent No.1 is annexed with the complaint at page No.102 to 119. Both Accused were arrested on 21.04.2023.

3. Mr. Khan, learned Advocate appearing on behalf of Applicant would submit that the Applicant is being implicated *sans* any material depicting her nexus. He would submit that the Applicant had no knowledge regarding the contents of the parcel containing prohibited substances and her limited involvement is to the extent of acts done by her in good faith for her partner (co-accused) who used her documents and mobile number without her consent which led to her indictment. He would rely upon the decision of ***Rakesh Kumar Raghuvanshi v. State of Madhya Pradesh***⁵ to submit that to constitute an offence under the NDPS Act both physical as well as mental awareness of the presence and nature of the contraband is required which, as per her contention was absent. He would rely on the decision of ***Bharat Chaudhary v. Union of India***⁶ to submit that taking the prosecution case as its highest against the Applicant, the

5 2025 SCC OnLine SC 122

6 2021 SCC OnLine SC 1235

WhatsApp messages downloaded from the mobile phone devices and referred to and relied upon by prosecution cannot be treated as sufficient material to establish the Applicant's link with co-accused. He would place reliance on the decision of the Supreme Court in the case of *Kalvakuntla Kavitha V Directorate of Enforcement*⁷ to submit that Applicant's had no knowledge of the crime and her vulnerability was misused by her partner for his illegal motives. He would thus pray for the Application to be allowed.

4. Mr. Dalvi, learned Advocate appearing on behalf of Respondent No.1 would submit that the parcel was booked in the name of Accused No.2 and as per her own Section 67 statement, it was booked by her boyfriend. He would submit that the conversation between the co-accused couple makes it amply clear that Applicant had sufficient knowledge of the commission of the crime as also about the alleged contraband as she was tracking the said parcel. He would submit that all the evidence annexed to the complaint point towards the guilt of Applicant and would further submit that complacency or ignorance can never be an excuse for a crime. He would submit that the rigours of Section 37 of the NDPS Act are attracted in this case since the contraband seized is of commercial quantity. He has drawn my attention to page No. 94 of the Application which is the statement recorded of the Applicant. He would state that nexus of the Applicant

7 2024 SCC OnLine SC 2269

stands established with respect to a video clip found in her mobile phone which pertains to the steps to be taken for procuring the alleged contraband from the supplier. He would state that the same steps have been adopted by the accused in procuring the alleged contraband. He would state that *prima facie* if such a video clip is found in the mobile phone of the Applicant, it shows her complicity in the present crime and she cannot feign ignorance. This is a substantial *prima facie* material showing her nexus in the crime. He would state that Applicant's complicity is further substantiated because of her association with accused No. 1 in attempting to not only track the consignment / parcel but make all attempts to retrieve it. This shows that Applicant had an ulterior motive. He would conclude his submissions by stating that the Applicant has failed to make out her case to counter the rigors of Section 37 of the Act and would thus pray for rejection of the Application.

5. Ms. Bajoria, learned APP appearing on behalf of Respondent No.2 – State would adopt the arguments made by Mr. Dalvi and would further submit that committing illegal acts in the name of women is a common *modus-operandi* adopted by drug traffickers since courts generally adopt a comparatively lenient approach towards women offenders. She would submit that the Applicant is an educated woman working as a sales person, she is expected to have sufficient

knowledge of the repercussions of her actions. She would thus pray for the Application to be rejected.

6. I have heard the learned advocates at the bar and with their able assistance perused the record of the case including the online conversations between co-accused.

7. At the outset, I shall put forth that the observations recorded are on my *prima facie* findings and thus, I shall refrain from recording any findings that may prejudice the case of the parties. Applicant is admittedly in a relationship with Accused No.1. She claims to be unaware of the order placed by Accused No.1. She has also claimed that he used her KYC Documents and mobile phone for booking the said contraband for his friend. Decisions of the Supreme Court in ***Bharat Chaudhary (supra)*** and ***Rakesh Kumar Raghuvanshi (supra)*** render the documents relied upon by the prosecution for limited purpose at the stage of Bail. Applicant's complacency and role in the crime can be ascertained and proved at the stage of trial. Though it is seen that complicity of Applicant along with her co-accused boyfriend is argued by the prosecution and Applicant having made inquiry with the postal authorities who informed her that the parcel was stuck with the customs office in Mumbai and thereafter Applicant approached her friend one Mr. Arif and sent him the tracking number of the parcel with a requisition to clear and obtain the said parcel. At this *prima*

facie stage the arguments raised by the prosecution do not persuade me to hold that Applicant may have been guilty of committing the crime. Whether the acts were done knowingly and her acts were as a result of conspiracy can only be ascertained and proven in the stage of the trial. At this *prima facie* stage, I am inclined to allow the Application for Bail. Applicant has no antecedents, her conduct and further chances of committing similar crimes can be regulated by imposing appropriate conditions.

8. In view of the above, present Application is allowed in terms of prayer clause (a) 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 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 a.m. to 12:00 p.m. for six months after release or 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 she 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) In case of two consecutive defaults in reporting to the Investigating Officer, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

9. 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. The Trial Court in *seisin* shall proceed with the trial in accordance with law and adjudicate the case based on the evidence on record without being influenced by any of the findings herein.

10. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Digitally signed
by RAVINDRA
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AMBERKAR
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2025.03.07
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