

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2904 OF 2024

Abhishek Shorban Kuntal

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Ms. Ashwini Achari a/w. Mr. Taraq Sayed and Mr. Anish Pereira, Advocates for Applicant.
 - Mr. Sukanta A. Karmakar, APP for Respondent.
 - PSI – Dipesh Kini, Anti Narcotics Cell, Thane Crime Branch.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 24, 2025

P.C.:

- 1.** Heard Ms. Achari, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent.
- 2.** This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') seeking Bail in connection with C.R. No.19 of 2023 registered with Chitalsar Police Station for offences punishable under Sections 8(c), 22(c), 29 and 30 of the Narcotics and Psychotropic Substances Act, 1985 (for short '**NDPS Act**').
- 3.** Applicant is arraigned as Accused No.5 in the present crime. Accused Nos.1 to 4 have been released on bail. Their orders of release are appended to Application. The order of release of Accused No.4 dated 17.03.2025 in Bail Application No.4770 of 2024 is placed before me by Ms. Achari.

4. *Prima facie*, after perusing record and hearing learned prosecutor it is seen that there is no clarity on issue as to who has disclosed name of present Applicant namely Accused No.5.

5. On this ground Mr. Karmakar, learned APP would persuade me to consider three pages in the charge-sheet appended to Application. He has drawn my attention to page No.108 to persuade me to consider one *whatsapp* chat messages appearing thereon replicating certain chemical names 'toluene', 'bromine' etc. which has been exchanged between co-accused persons with the present Applicant. *Prima facie*, I do not find it incriminatory in nature.

6. Mr. Karmakar, learned APP would submit that on basis of that particular message it needs to be inferred by the Court that co-accused persons alongwith other co-accused are conspirators in the present Application having conspired to do something sinister, *inter alia*, pertaining to manufacture of contraband. To fortify that statement he would submit that statement of witness appended at page No.317, if seen where the said witness had stated that he was working in same office as that of Applicant and said Applicant would sometime alongwith him used to bring alleged contraband 'Mephedrone' for consumption and also used to share and show it to them.

7. Mr. Karmkar would next draw my attention to page No.150

of the Application which is the statement of co-accused namely Accused No.4 wherein he has stated that in conjunction with present Applicant and some other person as stated therein, there was a plan chalked out by him to set up factory for manufacture of alleged contraband somewhere in the State of Haryana.

8. All this is *prima facie* hearsay. It does not show nexus of Applicant to the present crime. *Prima facie*, in the present case there are 7 Accused persons. Save and except aforementioned submissions, there is nothing incriminating which has been placed before me on record to show direct nexus of present Applicant with the other co-accused persons with respect to the recovery of alleged contraband from other accused persons. Admittedly, there is no recovery of any alleged recovery of contraband from the present Applicant.

9. Needless to state that complicity of Applicant in the crime shall be proved by prosecution at the time of trial. The aforementioned *prima facie* observations persuade me to consider the case of Applicant for grant of bail. Case of the Applicant is *prima facie* covered by decision of Supreme Court in the case of ***Tofan Singh Vs. State of Tamil Nadu***¹. Applicant is incarcerated for almost 2 years pending trial.

10. In view of the above *prima facie* observations, Application is

¹ (2021) 4 SCC 1.

allowed subject to following conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount;
- (ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his 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 he does so, it will entitle the prosecution to apply for cancellation of this order;
- (vi) Applicant shall not leave the State of Maharashtra

without prior permission of the Trial Court;

(vii) Applicant shall not influence with 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.

11. 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.

12. Bail Application No.2904 of 2024 is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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