

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3131 OF 2024

Hasina Mujabbir Rehman Shaikh .. Applicant

Versus

The State of Maharashtra .. Respondent

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- Ms. Suvidha R. Patil for Applicant
 - Ms. Rajeshree V. Newton, APP for State
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 23, 2025

P. C.:

1. Heard Ms. Patil, learned Advocate for Applicant and Ms. Newton, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail under Section 439 of the the Code of Criminal Procedure, 1973 (for short, "**Cr.P.C.**") in connection with Crime No. 61/2023 registered with Anti Narcotic Cell, Azad Maidan Unit, Crime Branch, Mumbai under Sections 8(c) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "**NDPS**").

3. Recovery in the present case is of 200 grams of contraband substance Mephedrone (commonly called as MD) from the rexine handbag of the Applicant held by her in her hand. Applicant was intercepted on the road due to her suspicious movements by a patrolling party led by In-charge P.I. Dahiphale and PSI Awale and on

taking inspection after being explained of her rights, search and seizure was carried out by them in a public place where she was intercepted. The said public place is described as near the Electric Pole No. FR/207, at Central Railway Godown Bus Stop, P. D'Mello Road, Wadibandar, Dongri, Mumbai. Said place of interception undoubtedly is a public place as contemplated under Section 43 of the NDPS Act.

4. Ms. Patil has drawn my attention to the dichotomy existing in the manner in which Applicant has been searched and alleged contraband has been seized as appearing in the Applicant's statement which is duly corroborated by Panchas statement and the inventory panchnama. Applicant's statement is appended at page No. 18 of the Application which *prima facie* states that on being informed about her rights, Applicant being a lady, the search and subsequently seizure ought to have been carried out in consonance with the provisions of Section 50(4) of the NDPS Act instead by a lady police officer. This provision clearly states that no female shall be searched by anyone excepting a female. Applicant further states that despite the presence of a lady police officer who was apparently called in the meantime, the search and seizure operation was carried out by PSI Awale on the instructions of In-charge PI. Dahiphale thereby violating the provisions of Section 50(4). Spot panchnama on the same date in

front of panchas which is appended at page Nos. 24-25 clearly corroborates the statement of Applicant. It states that in presence of panchas on the instructions of In-Charge P.I. Dahiphale, Applicant's purse was taken by PSI Awale and thereafter he searched the same to unearth the alleged contraband in the purse.

5. *Prima facie* on the basis of the above, it is clear that prosecution has not followed the substantive provisions rather mandatory in nature as contemplated under Sections 43 (applicable to public place) read with Section 50(4) of the NDPS Act especially when the search and seizure operation is in a public place which is a public road. In that view of the matter, Applicant's case deserves to be considered by the Court. Applicant is a lady without any antecedents.

6. This Court in the case of ***Mohd. Mobin Jahurul Hasan Manihar Vs. State of Maharashtra***¹ considered the decisions of the Supreme Court and various High Courts especially in the case of long incarceration and right of Applicant to plead justice. In the present case before me Applicant has been incarcerated for 19 months which is clearly covered by the said decision passed by me.

7. In view of the above *prima facie* findings, present Applicant deserves to be granted bail. Hence, Application is allowed in terms of prayer clause (a) subject to the following terms and conditions:-

1 Bail Application 713/2024 decided on 20.01.2025

- (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 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 she does so, it will entitle the prosecution to apply for revocation of this order;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court. She shall deposit her passport, if any, with the Trial Court within one week of her release from prison;
- (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 her 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 revocation of this order.

8. 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.

9. Bail Application stands allowed and disposed.

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[MILIND N. JADHAV, J.]

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