

Ajay

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

CRIMINAL BAIL APPLICATION NO. 3606 OF 2024

Aslam Abdul Qadir Sama

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Ms. Lochan Chandka, Advocate for Applicant.
 - Mr. R.M. Pethe, APP for Respondent – State.
 - Mr. Prakash Ramdas Patil, Head Constable Bhiwandi Police Station present.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 03, 2025.

P.C.:

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

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R.No.259 of 2023 registered with Kongaon Police Station for the offences punishable under Sections 8(c) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “**NDPS Act**”). Applicant has been arrested on 09.08.2023.

3. Ms. Chandka, learned Advocate for Applicant has persuaded the Court to consider transgression of the appraisal of right under Section 50 of the NDPS Act and drawing Court’s attention to page No.35 of the Application which is the seizure/raid panchnama wherein

it has been stated that while on patrolling duty prosecution officers received specific information of a person who would pass through the service road near Ranjnoli Naka, Traffic Chowky towards Nashik alongwith some contraband (कोणत्यातरी ड्रग्सची विक्री करण्यासाठी). The learned Advocate has drawn the Court's attention to the appraisal letter appended at page No.46 which was primarily prepared by the prosecution officer on the spot on apprehending the Applicant according to the intelligence information received. In that letter, while appraising the Applicant in the first line of the said letter it is stated that the intelligence information received by the Officer is that Applicant was carrying/ferrying the contraband Mephedrone (MD). The statement in the appraisal letter reads thus:-

“..... आपके पास मॅफेड्रोन (MD) यह अमली पदार्थ होने की पक्की खबर मिली है।”

3.1. It is argued by the learned Advocate for the Applicant that there is apparent dichotomy in the seizure panchnama which does not refer to the name and nomenclature of the alleged contraband as MD with respect to the specific information received by the Prosecution Officer.

3.2. She would persuade the Court to consider that such a dichotomy *prima facie* vitiates the seizure panchnama as also the case of the prosecution at the outset and in that view of the matter,

Applicant would be entitled to bail.

4. *PER CONTRA*, Mr. Pethe, learned APP for the State in his usual fairness *prima facie* on perusal of the seizure panchnama and the appraisal letter would submit that though *prima facie* it may appear so the fact that Applicant was apprehended and arrested with conscious possession of the alleged contraband being true and in the presence of panchas, the Court would probably consider the complicity of the Applicant of trafficking of the contraband and therefore his indictment under the NDPS Act.

4.1. He would also persuade the Court to consider the menace of trafficking of drugs in Society and possibly due to reasons as argued at the *prima facie* stage in the present case, accused persons get let out on bail especially when there is every likelihood of them re-offending the crime. He would therefore persuade the Court to pass an appropriate order as according to the prosecution the seizure of the contraband from his person cannot be denied.

5. I have heard the learned Advocate for the Applicant and learned APP at the bar and with their able assistance perused the record of the case.

6. Though there are other grounds also to consider, the complicity of the Applicant would be determined in the trial, I am of the opinion that the present Application can be decided on the

aforementioned ground pleaded by the Applicant.

7. The provisions of the NDPS Act are stringent. The reason being that if the Applicant is apprehended and arrested with commercial quantity of the alleged contraband, then the rigours of Section 37 apply and satisfaction of the twin conditions under Section 37 would be a *sine qua non* for the Applicant to be enlarged on bail. Once such stringent Application of the provisions of NDPS Act is contemplated then the corollary to the Application of such stringent provisions is the scrupulous compliance of the statutory provisions by the prosecution under the NDPS Act. There can be no dereliction in following any of the statutory provisions as prescribed.

8. Provisions of Section 50 of the NDPS Act therefore act as a check and balance mechanism when a suspicious or suspected Accused persons is apprehended and he is suspected to carry the alleged contraband and when the law is set in motion either under the provisions of Sections 41, 42 and 43 of the NDPS Act in the given case.

9. As seen in the present case the appraisal letter under Section 50 *prima facie* identifies the alleged contraband by its nomenclature which was not the information which was received during intelligence input, which is infact delineated in the seizure panchnama prepared on the same date. The seizure panchnama is prepared after handing over of the appraisal letter to the Applicant. The apparent dichotomy

having been noticed in the appraisal letter and the seizure panchnama contents would therefore render the prosecution case a suspect and without delineating any further *prima facie* opinion on merits, Applicant is entitled to bail on this ground.

10. Hence, Bail 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 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 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 and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

12. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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