

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3609 OF 2024

Mehboob Aziz Pathan .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Mr. Lochan P. Chandka, Advocate for Applicant.
 - Ms. Mahalakshmi Ganapathy, APP for Respondent – State of Maharashtra.
 - Mr. Bhushan Shinde, API, Wagale Crime Unit – 5, Thane.
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CORAM : MILIND N. JADHAV, J.
DATE : FEBRUARY 13, 2025

P.C.:

1. Heard Ms. Chandka, learned Advocate for Applicant and Ms. Ganapathy, learned APP for Respondent – State of Maharashtra.

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.360 of 2023 registered with Shil Daighar Police Station for offences punishable under Section 8 (c) read with Sections 22 (c) and 29 of the Narcotics and Psychotropic Substances Act, 1985 (for short ‘NDPS Act’).

3. The Applicant is indicted for offences punishable under NDPS Act. The contraband in question is 150 grams of Mephedrone / Methamphetamine. The date of incident is 04.09.2023 and Applicant

is arrested on 05.09.2023.

4. Ms. Chandka has drawn my attention to page No.37 which is intelligence information / report forwarded by Senior Inspector of Police to Assistant Police Commissioner specifically stating that Applicant could be arriving on a motorcycle on 04.09.2023 at 02:30 p.m. with the contraband namely Mephedrone.

5. As against this specific information, Ms. Chandka has drawn my attention to the police station diary appended at page No.47 and would submit that on the same date when the aforesaid information was forwarded at about 09:10 a.m and 10:00 a.m. specific information received was noted in the station house diary and if the same is perused, it is stated that one person would be arriving alongwith the alleged contraband stated in the letter and Applicant is not named therein. Ms. Chandka is right in her contention as name of Applicant is specifically stated in the letter at page No.37 when it is not so in the information noted in the station house diary.

6. The dichotomy is apparent on the face of record. In that view of the matter, there appears to be a clear transgression of Section 42 of the NDPS Act.

7. That apart, regarding procedure for seizure followed by prosecution in the present case, Ms. Chandka has drawn my attention to the trap panchanama appended at page No.29 of even date which

when read categorically records that in the presence of witness Applicant was searched by the police official personnel namely Madhav Waghchoure and others on the instructions of the Investigating Officer whose name is stated therein. The statements of the two police personnel who carried out the search are appended at page Nos.65 and 71. At page No.65 is statement of Madhav Waghchoure whereas at page No.71 is the statement of Tejas Thanekar. Both the statements are in consonance with the trap panchnama which is recorded and therefore there is an apparent transgression of the provisions of Section 50 of the NDPS Act. This Court while considering a similar situation in the cases of *Zakir Sharifulla Sayyed Vs. the State of Maharashtra*¹ (Coram : Revati Mohite Dere, J.) and *Firoz Rauf Shaikh Vs. The State of Maharashtra*² has held that once there is a transgression of the statutory provisions namely Sections 42(1) and 50 as argued by Ms. Chandka, the Court will have to exercise its discretion in favour of the Applicant. Once this is seen *prima facie*, the Court will therefore have to pass appropriate order.

8. Ms. Ganapathy, learned APP would persuade the Court to allow her to take appropriate instructions from the concerned Investigating Officer and make her submissions on the next date.

1 Bail Application No.1966 of 2019 decided on 26.08.2019.

2 Bail Application No.5002 of 2024 decided on 06.02.2025.

9. At the request of Ms. Ganapathy, stand over to **18th February, 2025 at 02:30 p.m..** To be treated as '**Part-Heard**'.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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