

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3713 OF 2024

Abdul Gani Abdul Latif Jivani

.. Applicant

Versus

State Of Maharashtra

.. Respondent

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- Ms. Munira Palanpurwala a/w Ms. Sumaiya Khan, Ms. Deepa Amati and Ms. Kainat Sayed, Advocates for Applicant.
- Mr. Balraj B. Kulkarni, APP for State.
- Mr. Sameer Mujawar, API, DCB, CID, Unit-III, Mumbai.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 04, 2025

P. C.:

1. Heard Ms. Palanpurwala, learned Advocate for Applicant and Mr. Kulkarni, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail in connection with N.D.PS. Spl. Case No. 1966 of 2023 in C.R. No. 46 of 2023 registered at the instance of DCB, CID, Unit-III, Mumbai for the offences punishable under Sections 8(c) r/w 22(c) of the NDPS Act.

3. This is a chance recovery made by the prosecution from Applicant of the alleged contraband. Applicant is indicted since 15.05.2023.

4. It is the prosecution case that on 15.05.2023 when the Officers of prosecution noticed suspicious movement of the Applicant

near Shalimar Hotel, Bendi Bazaar, Mumbai they moved towards him and apprehended the Applicant. It is claimed by prosecution that they followed provisions of Section 50 of NDPS Act and pursuant thereto on search recovered 52 grams of the alleged contraband called Mephedrone (commonly known as M.D.).

5. Ms. Palanpurwala, learned Advocate for Applicant has drawn my attention to the Inventory Panchanama dated 03.07.2023 appended at Page No.29 of the Application to persuade me to consider the weight of the alleged contraband stated therein which is recorded as 52 grams. The date of the incident however is two months prior to the said date of Inventory Panchanama which is on 15.05.2023. She would draw my attention to the statement of the complainant and memorandum panchanama which are appended at Page Nos. 22 and 26 of the Application respectively. Weight of the alleged contraband recorded in the statement duly endorsed by the Investigating Officer and the memorandum panchanama is stated to be 52 grams in total (एकूण). When the stringent provisions of NDPS Act apply, doctrine of proportionality comes into play. Here is the case of the alleged contraband being shown to be weighing 52 grams and it is so noted subsequently during the examination before the Chemical Analyser that the said contraband is press sealed in a polythene bag. Nowhere either in the statement which is recorded on the date of the incident as

also in the memorandum panchanama recorded on that date the actual weight of the alleged contraband and weight of the polythene bag has been stated. On the contrary, it is stated that in all total (एकूण) weight of the contraband is 52 grams.

6. Another dichotomy that is noted in the memorandum panchanama is that after seizure, the plastic bags are specifically referred to in the said panchanama for which no weight has been ascertained. This position is fortified by the photographs appended at Page No.33 and 34 of the Application wherein the reference while issuing certificate from the magistrate is of the alleged contraband being press sealed in a polythene bag and kept in a green coloured envelope. Prosecution is expected to follow the procedural safeguards envisaged under Section 43 in case of such chance recovery from the public place scrupulously. There cannot be any dereliction since it would materially affect the substantive right of the Applicant who is apprehended. In the present case assuming for the sake of argument that weight of polythene bag may weigh around 2 to 4.5 grams which has not been placed on record and as such it would then be of an intermediate quantity. *Prima facie* the Inventory Panchanama itself records the total weight of the polythene bag, the green envelope as also the alleged contraband to be 65 grams. That apart there is another dichotomy which has been noticed by the Court. The alleged

contraband which was seized was white transparent powder whereas when the contraband is sent for chemical examination in the forensic laboratory is described as light brownish crystalline powder which can be noticed from the examination report which is appended at Page No.63.

7. Mr. Kulkarni, learned APP for State would oppose the release of Applicant by drawing my attention to the fact that Applicant has in all 7 antecedents out of which 5 are registered under NDPS Act.

8. However, in view of the above observatinos and lapses at the time of seizure and recovery as *prima facie* noticed and the dichotomy as envisaged in the weight of the alleged contraband, rigour of Section 37 may not therefore apply in the present case.

9. Hence, 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. 50,000/- 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 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 he 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; he shall submit his passport, if any, with the Police Station within a period of one week from the date of his release on bail;
- (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)** Any infraction of the above conditions shall entail cancellation of this order.

10. 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.

11. In view of the above directions, Bail Application stands allowed and disposed.

ER. Rajput

[MILIND N. JADHAV, J.]