

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3800 OF 2024

Arif Hamid Shaikh @ Michael

.. Applicant

Versus

The State of Maharashtra

.. Respondent

.....

- Mr. Kamlesh Satre a/w Mr. Pranay Saraf & Mr. Nilesh Bangar for Applicant
- Ms. Rajeshree V. Newton, APP for State
- Mr. Vijay Acharekar, API, Bandra Police Station

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 17, 2025

P. C.:

1. Heard Mr. Satre, 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 Criminal Procedure Code, 1973 (for short, "**CR.PC.**") in connection with Crime No. 1164/2023 registered with Bandra Police Station, Mumbai under Sections 8(c) read with Section 22(b) of the Narcotics Drugs and Psychiatric Substances Act, 1985 (for short "**NDPS Act**").

3. Facts in the present case are covered by the decision of this Court in the case of *Haji Mohd. Abdul Bhumedia v. The State of*

*Maharashtra*¹; *Arif Akram Shaikh v. The State of Maharashtra*²; *Sunday Eziko Ezagwu v. The State of Maharashtra*³; *Dilkush Sinai v. State of Goa Bench*⁴ and *Firoz Rauf Shaikh Vs. The State of Maharashtra*⁵ passed by this Court.

4. When the seizure panchnama dated 09.08.2023 is seen at page No. 35 of the Application, it is stated that the search of the Applicant is carried out by the constable on the instructions given by the Police Inspector and Police Sub-Inspector.

5. Ms. Newton, learned APP has drawn my attention to page No. 67 of the Application to contend that Applicant is the habitual offender. She would submit that he was externed for more than two years despite which he was found with the alleged contraband in the present chance raid which is the subject matter of the present Application within one year and therefore he has breached the externment order. If the Applicant has breached the externment order, prosecution can take appropriate steps as available to them in accordance with law. She would further submit that Applicant is also having several antecedents, details of which are stated in the

1 Bail Application No. 378 of 2022 decided on 23.08.2022
2 Bail Application No. 3158 of 2021 decided on 07.02.2023
3 Bail Application No. 3318 of 2023 decided on 29.02.2024
4 1995(2) Goa L.T.
5 Bail Application No. 5002 of 2024 decided on 06.02.2025

externment order which is appended to the Application. I have considered the same.

6. The case before me is the transgression of provision of Section 50 which is the statutory provision of NDPS Act. Once it is *prima facie* established that search and seizure is done by the police constable from the record of the prosecution and more specifically it was in the case of a chance raid, the provisions of NDPS Act are required to be scrupulously followed as observed by this Court in the aforementioned decisions. Reference is drawn to the provisions of Section 50 of the NDPS At which in the sub-section (1) itself refers to the provisions of Sections 41 to 43 of the NDPS Act. The language of Section 42 of the NDPS Act is clear and unambiguous. Police constable is unauthorized to carry out search and the search and seizure carried out by police constable *prima facie* renders the search illegal.

7. In view of the above, I am inclined to exercise my discretion in favour of the Applicant. Hence, the present Application is allowed in terms of prayer clause (ii) 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 concerned Investigating Officer on the third Saturday between 10:00 a.m. to 12:00 p.m. for the first 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 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 deposit his passport, if any, within two weeks after being released on bail with the Trial Court;
- (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.

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 the merits of the case.

9. Bail Application stands allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

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Date:
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