

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3886 OF 2024

Shamsuddin Abdul Kadar Atingal .. Applicant

Versus

State of Maharashtra .. Respondent

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- Mr. Sherali S. Khan, Advocate for Applicant
- Ms. Shilpa K. Gajare-Dhumal, APP for Respondent - State

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CORAM : MILIND N. JADHAV, J.

DATE : MAY 09, 2025

P. C.:

1. Heard Mr. Khan, learned Advocate for Applicant and Ms. Gajare-Dhumal, learned APP for Respondent - State.

2. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.PC.**") in connection with C.R. No. 378/2023 registered with APMC Police Station, Navi Mumbai for offences punishable under Sections under Sections 8(c) and Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "**NDPS Act**"). Applicant is arrested on 10.10.2023 for having found in possession of 1011 grams of Mephedrone (MD) and as of today his actual imprisonment is 1 year 6 months & 29 days.

3. At the outset, learned Advocate for Applicant would persuade me to consider the appraisal notice given to Application under Section

50 of the NDPS Act which is appended at page No. 41 of Application. *Prima facie* reading of the said notice, it is seen that oral appraisal as required under Section 50(1) of the NDPS Act is not appraised to Applicant by the NDPS Officer. What is intriguing is the fact that the endorsement which has been made on the appraisal letter appended at page No. 41 does not find mention in the seizure panchanama prepared by the prosecution and appended at page Nos. 36-39 of the Application. Arrest of Applicant is on the basis of intelligence input information received on the same day of his arrest by Police Havaldar Mr. Dnyaneshwar Bankar. However, upon *prima facie* perusal of the record, it is seen that receipt of intelligence input has been duly recorded in the daily diary/register by Mr. Bankar. However it is seen that this information which was received by Dnyaneshwar Bankar has not been intimated to the Statutory Officer under Section 42(2) of the NDPS Act by Senior Police Inspect Mr. Neeraj Chaudhary and not the recipient of the information. This is *prima facie* transgression of the statutory provision of Section 42(2) which is noticed from the face on record when the intelligence input information at page No. 37 is compared with the intimation letter at page Nos. 31-32 of the Application is seen. That apart, it is *prima facie* seen that the inventory panchanama drawn on 01.11.2023 appended at page No. 49

clearly shows affixation of the printed crime number on the label of the envelop containing the alleged contraband.

4. Learned Advocate for Applicant has referred to and relied upon the decision of this Court passed in the case of *Sarfaraj Abdul Majid Ahmed v. The State of Maharashtra*¹ in support of the aforesaid proposition.

5. Leaned APP has vehemently opposed grant of bail on the ground that commercial quantity of the alleged contraband has been recovered from Applicant and therefore rigours of Section 37 of the NDPS Act would apply to Applicant's case. However on the issue of transgressions, learned APP has stated that Court shall pass appropriate orders since transgressions are *prima facie* noticed from reading of prosecution documents itself. Learned APP has also persuaded the Court to consider that alleged transgressions as argued by Advocate for Applicant are technical in nature and therefore non-compliance of said procedural transgressions will not by itself entitle the accused to grant of bail and the said procedural violation must be assessed in context to the specific case and should not automatically result in bail or acquittal.

1 Bail Application No. 4954/2024 a/w Companion Bail Applications decided on 24.03.2025

6. I have considered the rival submissions made by learned Advocates at the Bar and with their able assistance perused the record of the case.

7. *Prima facie* it is seen that there are transgressions of provisions of Section 42, 50 and 52A of the NDPS Act and therefore it assumes significance while considering bail Application of an accused person as held by the Supreme Court in the case of ***Sarija Banu & Anr. v. The State of Maharashtra***². This Court in several cases has taken cognizance of the fact that there is no plausible explanation given by prosecution to justify mentioning of the crime registration number on the label of the envelop at the time of seizure of the alleged contraband. In this regard observations and findings of the Supreme Court in the case of ***Kamaljit Singh @ Pappu v. The State of Punjab***³ will apply to the case of Applicant. Supreme Court while dealing with a case involving a similar issue recorded and observed that it is unfathomable as to how the FIR number could be noted on the search and seizure panchanama when the same was drawn up obviously at an earlier point in time and it preceded the registration of the FIR. This Court has held that filing of FIR in NDPS cases must occur promptly following the detection of the crime to maintain its integrity and reliability. In the context of NDPS Act, the timing of the FIR in relation

² 2004 12 SCC 266

³ Criminal Appeal No. 424 of 2009 decided on 31.01.2019

to detection of a crime is crucial. This Court has further held that FIR serves as the initial document that sets the criminal law in motion providing the earliest version of events concerning commission of a cognizable offence. It is seen that FIR number is assigned by Police Station only after the FIR is registered and recorded and it has an unique number, whereas the search and seizure takes place prior thereto.

8. Though it is argued by learned APP that commercial quantity of the alleged contraband is seized from the Applicant, there are glaring *prima facie* discrepancies observed in the seizure procedure conducted by prosecution coupled with non-compliance of statutory provisions of NDPS Act and hence in that view of the matter, rigours can be said to be *prima facie* satisfied. Needless to state that complicity of Applicant in the crime can be proved by prosecution in trial on evidence. That apart this Court has in the present case observed that statutory compliance of provisions of Section 52A read with Rules 8 and 18(1) & 2 of the Narcotic Drugs And Psychotropic Substances (Seizure, Storage, Sampling And Disposal) Rules, 2022 (for short "**said Rules**") have also not been followed by the prosecution while conducting inventory panchanama. It is *prima facie* seen that certificate issued by Magistrate in the present case is not in the prescribed stipulated Form 5 of the said Rules read with NDPS Act

identifying the alleged contraband. It is seen that certificate by the Magistrate is in continuity with the inventory panchanama.

9. In view of the aforesaid *prima facie* transgressions observed on the face of record in respect of Section 42(2) of the NDPS Act read with Section 50 and 52A of the NDPS Act and long incarceration of Applicant pending trial for more than 1 year 6 months and trial taking an indefinite time to conclude since it has not commenced, I am inclined to consider the Application for grant of bail. Bail Application is hence 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) Applicant is permitted to furnish provisional cash bail of Rs. 25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs. 25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;
- (iii) 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;

- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) 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;
- (vi) 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;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court. He shall deposit his passport, if any, with the trial Court.
- (viii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and
- (ix) 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.

10. 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.

11. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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