

Soparkar

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

CRIMINAL BAIL APPLICATION NO.3942 OF 2024

Irfan Farooq Sorathiya

.. Applicant

Versus

State of Maharashtra

.. Respondent

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- Mr. Kamlesh Satre with Mr. Kiran Gogawale, Advocates for Applicant.
 - Mr. Sukanta Karmakar, APP for the Respondent.
 - Mr. Sanjay Khandagale, ANC, Kandivali is present.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 25, 2025.

P.C.:

1. Heard Mr. Satre, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent - State.

2. It is prosecution case that on 21.04.2022, Applicant was found in possession of the alleged contraband while patrolling by Prosecution Officers and contraband namely Mephedrone commonly known as 'MD' weighing 163 grams was recovered from Applicant. Applicant was arrested pursuant to which seizure panchanama was prepared which is appended at page No. 18 of the Application. On his apprehension and arrest, alleged contraband was marked, sealed and kept in a polythene bag which was further enclosed and packed in a blue coloured envelope (आकाशी कलर इन्व्हलप).

3. The learned Advocate for Applicant has drawn my attention to page No.83 which is the extract of the maalkhana register where the alleged contraband has been subsequently deposited for the purpose of inventory sampling. The inventory panchanama dated 11.05.2022 is appended at page No.38 of the Application. He would submit that at the time of depositing and retraining the alleged contraband which was seized if the contents of maalkhana register appended at page No. 83 is read, it is seen that the said contraband was found to be in a pista coloured envelope (पिस्ता रंगाच्या कागदी पाकिटात).

4. That apart, Mr. Satre would persuade the Court to consider that the panchas, namely, Mr. Vaibhav Ghosalkar and Mr. Tanaji Bankar, while the search and seizure was carried out in their presence have not been named in the FIR rather their names are conspicuously absent from the FIR. The aforesaid *prima facie* transgression goes to the root of the matter since the provisions of Sub-Section (2) of Section 42 read with Rule 3 and Rule 10 of the Narcotics Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 are required to be scrupulously followed for complying with the procedure envisaged under Section 52A(2) read with (3) of the NDPS Act.

5. However, *prima facie*, it is seen that the date of seizure and recovery in the present case was prior to the enactment of the NDPS

Rules, 2022 and therefore, even otherwise the Standing Instructions 1 of 1998 and 1 of 1989 read with the Standing Order 1 of 1988 would govern the field. Supreme Court in the case of *Sarija Banu Alias Janarthani Alias Janani and Anr. Vs. State through Inspector of Police*¹ has held that Section 42 and requires strict compliance and any transgression of Section 42 will be a relevant fact required to be taken into account while considering a Bail Application.

6. In so far as the transgression noticed hereinabove is concerned, there is every possibility that the alleged contraband contained in the envelope may have been tampered with during the interregnum. Therefore, benefit of doubt will have to be given to the Applicant since the dichotomy of the contraband being found in a different envelope is noticed *prima facie* by Court.

7. Needless to state that, prosecution can prove its case with respect to complicity of Applicant in the crime at the time of trial. Applicant has been incarcerated for the past 3 years pending trial, charge not having been framed and possibility of the trial commencing and completing in the near foreseeable future being doubtful, the Applicant can be released on bail.

8. Hence, Bail Application is allowed subject to the following terms and conditions:-

¹ (2004) 12 SCC 266

- (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.

9. It is clarified that the above 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 and the trial shall be adjudicated on the basis of the evidence led by the parties uninfluenced by the present order and strictly in accordance with law.

10. Both Bail Applications are allowed and disposed.

[MILIND N. JADHAV, J.]

Soparkar

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