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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4142 OF 2024

Imran Noor Mohammed Memon .. Applicant (Accused No. 2)

Versus

The State of Maharashtra .. Respondent

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- Mr. Dilip Mishra a/w Mr. Ayaz Khan, Ms. Zehra Charania & Ms. Mallika Sharma for Applicant
- Ms. Megha S. Bajoria, APP for Respondent - State

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 20, 2025

P. C.:

1. Heard Mr. Mishra, learned Advocate for Applicant and Ms. Bajoria, learned APP for State.

2. Applicant - accused No. 2 has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") in connection with Crime No. 67/2023 registered with DCB CID, Unit-9, Mumbai for offences punishable under Sections 8(c) r/w 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "BNS").

3. It the case of the prosecution that based on the information received, a raid was conducted and accused No 1 was apprehended and from his conscious possession 1016 grams of the alleged contraband Mephedrone (MD) has been recovered. At the same time,

present Applicant i.e. accused No. 2 has also been apprehended for being in possession of 1017 grams of the same contraband. Seizure panchnama is appended at page Nos. 46 & 47 of the Application. What is states is that the entire procedure under Section 42 of the NDPS Act has been carried out scrupulously and signatures of both the accused persons have been specifically taken on the contraband which was seized and marked as Exh. 'A' and Exh. 'B'. What happened next is that during the inventory panchnama carried out after two months, the weight of the alleged contraband is shown to be different for both the seized contraband. In the inventory panchnama the alleged contraband is shown to have weighed 1001 grams in so far as the contraband of the present Applicant i.e. Exh. 'A' is concerned. That apart Section 52-A(3) certificate however shows that the alleged contraband which has been recovered from the Applicant weighed at 1011 grams during inventory and its nomenclature is changed to Exh. 'B' which was originally associated with the alleged contraband recovered from accused No. 2.

4. Ms. Bajoria, learned APP would submit that insofar as the procedure under Section 42 of the NDPS Act is concerned, it has been scrupulously followed and the mix up that has happened at the time of inventory which can be seen in the certificate issued by the Magistrate is something which should not be gone into by the Court at this stage

and be proved at the time of the trial. She would submit that the alleged mix up would not exonerate or give away the fact that Applicant has been apprehended and indicted in possession of commercial quantity of alleged contraband in view of the rigour of Section 37 of the NDPS Act being applicable to the Applicant's case.

5. I have perused the record of the case and heard the learned Advocates at the Bar.

6. *Prima facie* the aforesaid dichotomy is seen when the seizure panchnama appended at page No. 43 and when read at page Nos. 46 and 47 of the Application is juxtaposed with the inventory panchnama carried out two months later which is appended at page No. 75 of the Application. Supreme Court in the case of ***Sarija Banu Alias Janarthani Alais Janani and Anr. v. State through Inspector of Police***[1] has held that while considering violation of Section 42 and relevance thereof compliance of Section 42 is mandatory and it is a relevant fact required to be considered while considering a Bail Application. Though it is argued by learned APP that there is no dereliction in carrying out the procedure under Section 42, *prima facie*, in the present case it is seen that the procedure which has been carried out under Section 42 has led to an interchange of the two seized contraband at the time of inventory panchnama which is also a

1 (2004) 12 SCC 266

mandatory procedure emanating from the seizure carried out under Section 42 of the NDPS Act. The inventory panchnama is a statutory procedure which is subject to the provisions of Section 52-A(1) & (2) of the said Act. Once that procedure is carried out, it needs to the grant of certificate by the Magistrate under Section 52-A(3) of the NDPS Act. While carrying out this procedure the contents of the Narcotics Drug and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 which were enacted and came into force w.e.f. 15.11.2022 are required to be adhered to by the prosecution. If there is any variance which is *prima facie* seen in the present case on the face of record while carrying out the inventory procedure *qua* the seizure procedure, the same would *prima facie* in my opinion be a supsect and vitiate the seizure panchnama. It is incumbent upon the Investigating Officer (IO) when he undertakes the procedure under Section 52-A(2) to ensure correctness of the contraband seized and whether it is specifically reproduced in the format which is given in Form 5 of the NDPS Act read with NDPS Rules referred to herein above. The reason for the same is for certification of the correctness of the contraband which is seized and the samples which are drawn and sent for forensic. There is also another ground which has been raised by Mr. Mishra with respect to drawing of the seizure panchnama as to whether it was done at the

spot or elsewhere. However in view of the aforementioned *prima facie* obervations *qua* the procedural safeguards to be followed while search, seizure, inventory and ceritification of the alleged contraband, Applicant has made out a case for grant of bail. Hence, Bail Application is 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.50,000/- with one or two sureties in the like amount;

(ii) Applicant is permitted to furnish provisional cash bail of Rs.50,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs. 50,000/- 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;

(viii) Applicant shall not influence with 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.

7. 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.

8. Bail Application is allowed and disposed.

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[MILIND N. JADHAV, J.]

RAVINDRA MOHAN AMBERKAR
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