

Prasad Rajput
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4247 OF 2024

Mohd. Lukman Mohd. Irfan Khan	.. Applicant
Versus	
State of Maharashtra	.. Respondent

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- Mr. Kamlesh M. Sapre and Mr. Amol M. Thombre, for Applicant.
- Mrs. Rajeshree V. Newton, APP for State.
- Mr. Prakash Sawant, PSI, ANC, Worli Unit, Mumbai.

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CORAM : MILIND N. JADHAV, J.
DATE : JANUARY 14, 2025

P.C.:

1. Heard Mr. Sapre, learned Advocate for Applicant and Mrs. Newton, learned APP for State.

2. Applicant before me is arrayed as Accused No.1 in connection with C.R. No. I-04 of 2024 registered with Anti Narcotic Cell Worli Unit, Mumbai for the offences punishable under Sections 8(C), 20 (C) r/w 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985. At present, the Applicant is in Judicial custody and lodged at Mumbai Central Prison. Investigation is completed and chargesheet has been filed.

3. Admittedly, the contraband i.e. Charas of 202 grams has been recovered from the possession of the present Applicant. This is a

case of chance raid during the patrolling. Commercial quantity under the NDPS Act is 1,000 grams (i.e. 1 Kg.) which is permissible. Accusation is that Applicant was apprehended along with Accused No.2- Mohd. Fahim Mohd. Vasim Khan and he was found to be in possession of 1,251 grams of Charas.

4. In order to indict the Applicant prosecution states that while on patrolling duty they found Applicant and Accused No.2 in suspicious condition exchanging the contraband and this fact is supported by the Station Diary Entry. The Station Diary Entry shows that Officers of ANC went on patrolling duty at the incident spot. The theory of Accused Nos.1 and 2 exchanging the contraband is something which is not understood. On account of aforesaid theory of exchanging contraband, both the accused have been indicted on the ground of hatching conspiracy. The twin conditions under Section 37 have been satisfied in the present case before me.

5. I have heard learned APP on the issue of Accused No.1 having hatched the conspiracy but the same is not in my opinion based on reasonable ground of exchange which is alleged by the prosecution. Admittedly, recovery panchanama shows that the amount of contraband recovered from Applicant is 202 grams which is well below the commercial quantity. Applicant in the present case has no antecedents. Learned APP has drawn my attention to the earlier order

of the learned Sessions Court rejecting the Bail Application of the Applicant and would submit that reasons given therein are cogent. No doubt, the reasons given in the said order are cogent and offence of drugs is required to be controlled and regulated under the said Act as also by the Court. However, in the present case admittedly the recovery panchanama records that Applicant was carrying 202 grams only. The further attribution of conspiracy is not evident since the only allegation is that both the Accused were found to be exchanging contraband. Save and except aforesaid allegation, no other case is made out against the Applicant. The Applicant is incarcerated since 14th January, 2024. Which means he has completed one year today. His further incarceration is not required and he is enlarged on bail.

6. Hence, the following order:-

- (i) Applicant – Mohd. Lukman Mohd. Irfan Khan, in connection with C.R. No. I-04 of 2024 registered with Anti Narcotic Cell Worli Unit, Mumbai for the offences punishable under Sections 8(C), 20 (C) r/w 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 is ordered to be released on bail on furnishing P.B. and S.B. in the sum of Rs. 25,000/- (Rs. Twenty Five Thousand Only) with one or two sureties to the like amount;

- (ii) Applicant shall report to the concerned I.O. or Anti Narcotic Cell, Worli Unit once every month on the first Monday of the month between 10.00 a.m. to 12:00 p.m.;
- (iii) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates, unless specifically exempted;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (v) 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, as applicable;
- (vi) Applicant shall not misuse his liberty in any manner or to influence the witnesses in any way; and
- (vii) Any infraction of the conditions shall entail cancellation of bail granted to the Applicant.

7. Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]