

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4306 OF 2024

Mohammed Gulfam Mohammed Ajaz Khan .. Applicant

Versus

State Of Maharashtra .. Respondent

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- Mr. Tohid Shaikh i/by Ms. Anjali Patil, Advocate for Applicant.
- Ms. Shilpa K. Gajare-Dhumal, APP for State.
- PSI – Suresh Salunkhe, ANC Worli Unit.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 27, 2025

P. C.:

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

2. Applicant - accused has filed the present Application for regular bail in connection with Crime No. 57 of 2021 registered with ANC Worli Police Station for offence punishable under Sections 8(C), 20, 22 of the NDPS Act¹.

3. This is the third Bail Application filed by the Applicant. Earlier Bail Applications were rejected. Applicant is incarcerated for the past 3 years 7 months and 24 days. Applicant was 19 years old at the time of arrest. In a chance recovery Applicant was apprehended with 45 sealed bottles of the alleged contraband Codeine Phosphate

¹ Narcotics Drugs & Psychotropic Substances Act, 1985

Syrup and 3.4 Kgs. Of Ganja. In so far as the contraband Ganja is concerned, it is of intermediate quantity. The defence of the Applicant is that he was informed any of the grounds of his arrest.

4. Mr. Shaikh, learned Advocate for Applicant has drawn my attention to the arrest / surrender form appended at page No.127 of the Application. At page No.128 it is seen that the relevant column of informing him the grounds of his arrest are completely blank. Though he also raised the ground of non-compliance of provisions of Section 50 and 52. In that regard he would submit that chargesheet does not contain the inventory panchanama at all neither there is certificate under Section 52A of the NDPS Act.

5. Ms. Gajare-Dhumal, learned APP would submit that since Applicant's arrest was prior to the enforcement of the NDPS Rules in 2022, the inventory panchanama is not available. She would fairly state that the standing orders 1 of 88 and 1 of 89 which were be holding the field and governing the procedure to be adopted at the then time have been followed and samples have been drawn and sent for chemical analysis. She would submit that as per seizure panchanama, the alleged samples were drawn were directly sent for chemical analysis.

6. She would submit that trial has commenced and three out of seven witnesses have been examined and four are yet to be examined.

7. Record shows that Applicant was arrested on 03.07.2021 and the samples were sent for chemical analysis on 05.07.2021. *Prima facie* it is seen that provisions of Section 52A (2)(a) (2) (c) have not been complied with in the present case and in that view of the matter, statutory procedure having not been followed it would vitiate the recovery of the alleged contraband. Provisions under the NDPS Act are required to be scrupulously followed.

8. In view of the above dichotomy and considering the long incarceration of the Applicant, 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. 25,000/- with one or two sureties in the like amount;
- (ii)** Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 am to 12:00 pm 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;
- (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.

9. 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 merits of the case.

10. In view of the above directions, Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]