

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4445 OF 2024

Musanna Nasir Bawazir

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Sherali S. Khan, Advocate for Applicant.
- Mr. Balraj B. Kulkarni, APP for Respondent – the State of Maharashtra.
- PI – Sadanand Yerekar, Unit – 3, DCB, CID, Mumbai.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 18, 2025

P.C.:

1. Heard Mr. Khan, learned Advocate for Applicant and Mr. Kulkarni, learned APP for Respondent – the State of Maharashtra.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking Bail in connection with C.R. No.624 of 2023 registered with N. M. Joshi Marg Police Station for offences punishable under Sections 8 (c), 22 (c) and 29 of the Narcotics and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

3. Applicant is indicted in the present crime alongwith two other Accused. He is arraigned as accused No.2. Recovery has been effected from accused No.1 on 18.10.2023 of the alleged contraband. On the basis of statement of accused no.1, accused Nos.2 and 3 have

been apprehended on the ground that he has stated that he received the alleged contraband from Accused Nos.2 and 3. Accused No.1 on him being arrested disclosed role of Accused Nos.2 and 3 as suppliers and took the prosecution team to their respective places. In so far Accused No.3 is concerned this Court had the opportunity of dealing with his Bail Application No.4579 of 2024 and after perusing the record of the case, he was enlarged on bail primarily on the ground that he was indicted merely on the basis of the statement of the co-accused i.e. accused No.1 about his alleged involvement in the crime but no conscious recovery whatsoever was made from him.

4. Neither the prosecution was / is in position to show linkage of any money trail or tracing of any money with respect to alleged contraband in question to the said accused in that case as also in the present case. The role of present Applicant i.e. accused No.2 is identical to that of accused No.3 in the crime. After taking the prosecution team to apprehend accused No.3 and when he was not found, accused No.1 took the prosecution team to a nearby locality and asked the prosecution team to wait at a road junction in Dongri in anticipation of arrival of accused No.3 who did not arrive. The disclosure of name of accused No.2 is in statement of accused No.1.

5. The Supreme Court in the case of *Tofan Singh Vs. State of Tamil Nadu*¹ Court held that statements recorded by NDPS officers

¹ (2021) 4 SCC 1

could be construed as statements to police officers given their duties and responsibilities in preventing and detecting crime under the NDPS Act. It held that right against self-incrimination and right to privacy under Article 20(3) and Article 21 of the Constitution apply to confessions recorded under Section 67 of the NDPS Act. It also held that officers under the NDPS Act should be construed as 'police officers' under Section 25 of the Indian Evidence Act to prevent coercion in recording confessions and that confessions made before such officers are inadmissible as evidence to protect fundamental rights under Articles 20(3) and 21 of the Constitution of India.

6. In the case of *Phundreimayum Yas Khan Vs. State (NCT of Delhi)*² the Delhi High Court has observed that disclosure statement of co-accused is *per se* not admissible without there being any corroboration thereof. Relevant paragraph No.24 of the said judgement reads thus:-

“24. The case of the prosecution, in so far as the applicant is concerned, is circumstantial, i.e. based solely on disclosure statement of the co-accused Sayed Javed Hussain which is per se not admissible without there being any corroboration. The prosecution has not been able to establish any connection between the subject offence and the location/CDRs of the accused persons, where the applicant is alleged to be present at the time when the contraband was collected by Sayed Javed Hussain. Merely because the applicant had been having frequent calls with the co-accused, would not be sufficient to hold that applicant is guilty of the subject offence.”

7. In the case of *Jasbir Singh Vs. Narcotics Control Bureau*³ the

² 2023 SCC OnLine 135

³ (2023) SCC OnLine Del 134

Delhi High Court in paragraph Nos.63, 67 and 68 of its judgment while interpreting Section 67 of the NDPS Act *vis-a-vis* Sections 25 and 27 of the Indian Evidence Act, 1872 held as under:-

“63. As statements recorded under Section 67 NDPS Act are inadmissible being hit by Section 25 IEA, the only way to make any part of such statements admissible, is by way of Section 27 IEA which creates an exception and allows only such part of a confessional statement, being information leading to discovery of some fact not previously in the knowledge of the police officer. In the present case, none of the statements of the Applicant lead to any discovery of a fact”, and hence, the statutory bar to their admissibility and reliability is attracted.

64. ***

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67. With regards to applicability of Section 27 IEA, the fact so discovered is admissible when accompanied by the recovery of a material object and does not include purely mental or psychological facts. It is relevant to note the observations of this Hon"ble Court in State v. Navjot Sandhu @ Afsan Guru CrI. A. No. 80/2003 wherein this Hon"ble Court, after placing reliance on Pulukuri Kottaya and Ors v. The King-Emperor 1946 SCC OnLine PC 49, and several other judgments of the Hon"ble Supreme Court and other courts, summarized the law governing Section 27 IEA as follows:

“396. We, therefore, hold that in order that Section 27 may be brought in aid, the prosecution must establish:—

- 1. That consequent to the information given by the accused, it led to the discovery of some fact stated by him.*
- 2. The fact discovered must be one which was not within the knowledge of the police and the knowledge of the fact was for the first time derived from the information given by the accused.*
- 3. Information given by the accused must lead to the discovery of a fact which is the direct outcome of such information.*
- 4. The discovery of the fact must be in relation to a material object and of course would then embrace within its fold the mental condition i.e. the knowledge of the accused of the place from where the object was produced and the knowledge that it was there.*

5. Only such portion of the information as is distinctly connected with the said discovery is admissible.

6. The discovery of the fact must relate to the commission of some offence.

68. Therefore, for any part of the alleged disclosures of the Applicant to be admissible, it was necessary that such disclosure led the Respondent to recovery of any contraband, or any other 'fact' related to the alleged offences. Given that none of the disclosures of the Applicant, except (at best for the recovery of a contraband involving quantity lesser than small quantity) led to the discovery of any object, or a "new fact" thereby, such disclosures under section 67 NDPS Act are held inadmissible in evidence."

8. In the case of *State Vs. Pallulabid Ahmad Arimutta⁴*, the Supreme Court held that CDR details of some of the accused or allegations of tampering of evidence by accused is an aspect that can be examined at the stage of trial. Hence statement given under Section 67 of the NDPS Act, 1985 cannot be considered at the stage of bail.

9. In the present case, apart from statement of co-accused i.e. accused No.1 there is no other corroborating evidence placed on record to show anything incriminating linking the role of present Applicant to the alleged contraband and the crime in question. Hence on parity with the accused No.3 and reasons given in the order dated 16.01.2025 and the aforementioned *prima facie* observations, Applicant is granted bail subject to following 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;

⁴ SLP (Cri.) No. 3242 / 2022 dated 10.01.2022

- (ii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 a.m. to 12:00 p.m. for the first three months after release 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 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.

10. The aforesaid observations are *prima facie* on the basis of record of the case which have been argued before me and is an expression of opinion by this Court only for the purpose of enlargement of Applicant on bail and shall not influence the trial in the present case.

11. Bail Application stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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