

Ajay

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

BAIL APPLICATION NO. 4579 OF 2024

Mohd. Salman Salim Shekha

Applicant /
.. Accused No.3.

Versus

The State of Maharashtra

Respondent /
.. Complainant

-
- Mr. Ayaz Khan a/w. Zehra Charania, Mr. Dilip Mishra and Ms. Mallika Sharma, Advocates for Applicant.
 - Mr. Mayur S. Sonavane, APP for Respondent – State.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 16, 2025.

P.C.:

1. Heard Mr. Khan, learned Advocate for Applicant and Mr. Sonavane, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking bail in connection with C.R. No.624 of 2023 initially registered with N.M. Joshi Marg Police Station transferred to DCB, CID, Unit-3 and renumbered as C.R. No.82 of 2023 for the offences under Sections 8(c), 22(c) read with 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”).

3. Applicant before me is Accused No.3 and seeks enlargement on bail on the ground that he is innocent and is falsely implicated in the case and on the principal ground that no recovery whatsoever has been made of the alleged contraband substance from his possession or at his instance.

4. Mr. Khan, learned Advocate for Applicant draws my attention to page No.65 of the Bail Application which is the disclosure panchnama statement dated 18.10.2023 of Accused No.1 who was found in possession of alleged contraband. He would submit that on the basis of the said statement, Accused No.3 - Applicant before me has been arrested. Perusal of the said statement shows that Accused No.1 agreed to show the name, place and identification of the supplier of the alleged contraband drugs to the independent witnesses. It is a detailed panchnama which records that independent witnesses were taken to building No.13 known as 'Fatimabai building'. Accused took the panch witness to the first floor and specifically pointed out to the room stating that Accused No.3 stayed in that room from whom Accused No.1 had purchased the alleged contraband of 500 gms white colour MD and 750 gms light brown colour MD.

5. Prosecution investigated and noted in the panchnama that after obtaining additional information the said room number pointed out was Room No.21 on the first floor of Fatimabai Building situated at

Dharamshala Road, Imamwada, Dongri, Mumbai. The said room was closed and Accused No.1 informed the panch witnesses that Accused No.1 and Accused No.3 may have got news of his arrest and hence they may have fled from there. Thereafter Accused No.1 took the panch witnesses to another location in the same vicinity near Rehman Shah Baba Dargah lane and pointed out that near the entrance of the lane, four days prior to his arrest, Applicant had sold similar contraband i.e. 250 gms. light brown MD to him. Thereafter Accused No.1 informed the panch witnesses and the Police Officers that if they waited for too long in that area to apprehend the Applicant then there is likelihood that the Applicant may run away and therefore adhering to the advice given by Accused No.1, the prosecution team and panch witnesses returned back after almost three hours.

6. As against this, Mr. Khan has drawn my attention to the Arrest / Court Surrender Form appended at page No.212 dated 02.12.2023 which is the date of arrest of the Applicant who is arraigned as Accused No.3 in the crime. Address of the Applicant as stated in the said arrest form is shown as Room No.20 in column No.6(xi) and (xii) on the first floor of Fatimabai building.

7. That apart, the principal objection raised by Mr. Khan is that at the time of arrest of Applicant – Accused No.3 prosecution has not conveyed the grounds of his arrest thereby not conforming to the

procedure established under the provisions of Section 50 of Cr.P.C.. He would submit that compliance of Section 50 in such a crime when admittedly Applicant – Accused No.3 was not found to be either the carrier or in possession of the seized contraband ought to have been followed.

8. Mr. Khan has argued that Applicant has been arrested on the basis of arrest / court surrender form appended at page No. 212 of the Application. He would submit that it is the requirement of Section 50 of Cr.P.C. that the accused who has been arrested without warrant is required to be communicated forthwith about the full particulars of the offences for which he is arrested or any other ground for such arrest. According to him arrest in non-compliance of Section 50 of Cr.P.C. also violates the provisions of Article 22(1) of the Constitution of India and thus would submit that there is violation of Applicant's constitutional rights as well as statutory rights. It is seen from the record that in the present case, there is flagrant violation of Section 50 of Cr.P.C. and since the grounds of arrest are not communicated when the Applicant, it may deem to make his arrest illegal. Communication of grounds of arrest is intended to have an avowed purpose so as to enable the accused to know what is the material in hand of the Investigating Officer which would justify his arrest and enable him to oppose the remand and secure his release on bail which are the safeguards provided in law to the accused. On failure to do so and

non-communication to the Applicant despite his arrest through arrest / court surrender form is therefore violative of the statutory as well as constitutional rights of Applicant in the present case.

9. Mr. Sonavane, learned APP has vehemently opposed the Bail Application and would submit that compliance under Sections 42, 50 and 52A of the NDPS Act has been followed meticulously. He would submit that there is sufficient material collected during investigation against the Applicant and Accused Nos.1 and 2 who have indulged in a conspiracy for illicit trafficking of the contraband MD in commercial quantity. He would submit that there is sufficient material in the form of screenshots of Whatsapp conversations, CDR data and statement of independent witnesses recorded under Section 67 of NDPS Act and hence prays for rejection of the Application.

10. The issue of conspiracy which can be borne out from the record is only on the basis of the statement of Accused No.1 alleging the involvement of the Applicant. It is seen that recovery from Accused No.1 has been made through a chance recovery during patrolling and in that view of the matter prosecution would have to establish a *prima facie* linkage with the supplier on the basis of appropriate CDR or any *prima facie* evidence which would lead to the presumption of the involvement of the Applicant as one of the associate of Accused No.1 and more specifically when its the case of

principal Accused No.1 that Applicant is the supplier from whom he purchased the alleged contraband. Mere statement of Accused No.1 is the only material placed before the Court as can be seen from the record of the present case. That statement of the Accused No.1 undoubtedly needs appropriate corroboration for implicating the Applicant, which apart from the fact that Applicant was a resident of Fatimabai building does not stand to be proved. Applicant does not have any antecedents which is another reason for considering his case as he has been incarcerated since 02.12.2023 for a period of more than 1 year and 2 months.

11. Further, the Supreme Court in the case of *Nitish Adhikary alias Bapan Vs. State of West Bengal*¹ had considered the release of under-trial in view of his incarceration for a period of one year and seven months. Similarly, the Supreme Court in the case of *Sukhvinder Singh Bittu Vs. State of Punjab* in Criminal Appeal No.1204 of 2024 decided on 26.02.2024 considered one year incarceration period of the under-trial despite he being apprehended with 50 kgs. of poppy straws which is the commercial quantity.

12. In view of the above *prima facie* observations, I am inclined to consider the submissions made by Mr. Khan and in view of the aforementioned dichotomy which has been delineated by me herein above, Applicant not having been communicated the grounds of

¹ 2022 SCC Online 2068

arrest, no recovery made from Applicant and Applicant having been incarcerated for more than one year and two months, this Court finds this to be a fit case for grant of bail to the Applicant in the specific facts of this case.

13. Hence, the following order:-

- (i) Applicant – Mohd. Salman Salim Shekha is directed to be released on bail on furnishing P.R. Bond of Rs.25,000/- (Rs. Twenty Five Thousand only) with one or two sureties in the like amount;
- (ii) Applicant shall report to the Investigating Officer at DCB, CID, Unit – 3, 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 and will not take any unnecessary adjournments, if he does so it will entitle the prosecution to apply for revocation 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, as applicable; and
- (vii) Any infraction of the conditions shall entail cancellation of bail granted to the Applicant.

14. The aforesaid observations are *prima facie* on the basis of record of the case and is an expression of opinion by this Court only for the purpose of grant of bail to Applicant and shall not influence the trial in the present case.

15. In the above terms, Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]

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