

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4770 OF 2024

Salauddin Abdulgani Shaikh @ Mama .. Applicant

Versus

State of Maharashtra .. Respondent

.....

- Mr. Marmik Shah a/w Mr. Sahil Khullar for Applicant
- Mr. Dinesh J. Haldankar, APP for State
- Mr. D.C. Kini, PSI, Anti Narcotics Cell, Crime Branch Thane City

.....

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 17, 2025

P. C.:

1. Heard Mr. Shah, learned Advocate for Applicant and Mr. Haldankar, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.PC.**") in connection with Crime No. 19/2023 registered with Chitalsar Police Station, Thane for offences punishable under Sections 8(c), 22(c), 29 and 30 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "**NDPS Act**").

3. Applicant – accused No. 4 is arrested pursuant to Section 67 inquiry after the arrest of other co-accused. *Prima facie* it is seen that on 23.01.2023, accused Nos. 1 and 2 were both found with 54 grams and 11 grams of Mephedrone (MD), the alleged contraband.

The case of the prosecution is that officers of the prosecution received information about absconding accused No. 3 and led a trap for him and he was apprehended and arrested on 30.01.2023 alongwith 54 grams of the alleged contraband MD. In his statement, accused No. 3 has revealed the name of the present Applicant as having been the supplier.

4. Mr. Haldankar, learned APP has vehemently opposed the present Application on the footing that Applicant has been involved in similar offences considering that there are three specific witness statements appended at page Nos. 356, 364 and 366 of the Application which *prima facie* show the role of the Applicant. Applicant is arraigned as accused No. 4 and arrested on disclosure of accused No. 3's statement. In all there are seven accused in the matter. Mr. Shah, on being asked by Court, would confirm that there are no antecedents whatsoever insofar as the present Applicant is concerned. *Prima facie* when the said witness statements are seen, all that the witnesses have stated that they have seen the present Applicant mixing some substance along with Rajnigandha Pan Masala which they used to regularly chew and they have heard from others that Applicant was involved in manufacturing of MD by a particular factory in the State of Haryana sometime in the past. These statements are *prima facie* hearsay. What is significant to note is that

when the Applicant was arrested, there was no conscious possession of the alleged contraband having been recovered from him. The aforesaid *prima facie* observations and submissions of co-accused being the only material with the prosecution to indict the Applicant persuades the Court to grant bail to the Applicant. Case of Applicant is covered by the decision of the Supreme Court in the case of Tofan Singh Vs. State of Tamil Nadu¹. Applicant is arrested on 31.01.2023 and since then he is in detention for 2 years, 1 month & 13 days. Hence, present 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) 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;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

¹ (2021) 4 SCC 1

- (iv) 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;
- (v) 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;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and
- (viii) 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.

5. 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.

6. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Amberkar

RAVINDRA
MOHAN
AMBERKAR

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date: 2025.03.17
19:52:00 +0530