

Kishor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4925 OF 2024

Rashid Mohammad Iqbal Kapadia .. Applicant

Versus

State of Maharashtra .. Respondent

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- Mr. Kamlesh Satre a/w. Mr. Iqbal Jalgaonkar, Advocate for Applicant.
 - Ms. Savita M. Yadav, APP for Respondent-State.
 - Mr. Sanjay N. Gaonkar, PSI Mankhurd Police Station present.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 28, 2025

P. C.:

1. Heard learned Advocate Mr. Satre for Applicant and Ms. Yadav for Respondent-State.

2. This is an Application under Section 439 of the Indian Penal Code, 1860 seeking Regular Bail in connection with C.R.No.164 of 2024 registered with Mankhurd Police Station for offences under Section 8(c) readwith Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “**NDPS Act**”).

3. The Applicant is arrested for possession of 52 grams of contraband namely Mephedrone (MD) in the recovery effected by the prosecution on 30th April 2024 at about 22:40 Hrs. during patrolling. The learned Advocate appearing for the Applicant has raised two

grievances namely non compliance of the provisions Section 50 of the Code of Criminal Procedure, 1908 (CrPC) and also non compliance of the conditions under which the procedure should be carried out under Section 50 of the NDPS Act. He has drawn my attention to the certificate / statement recorded before the Panchas appended at page No.40 of the Application wherein the Applicant has been informed that he can exercise his right under Section 50 of the NDPS Act. Nothing further as to what is his right is stated therein. The said Report / memorandum certificate prepared by the prosecution is clearly inadequate and cognizance of it cannot be taken in view of the legal provisions. Section 50 of the CrPC call for informing accused of the grounds of his arrest and of his right to bail. Section 50 of NDPS Act is the procedural law required to be followed by the prosecution before effecting search of the accused.

4. That apart the learned Advocate for Applicant has drawn my attention the memorandum Panchanama wherein admittedly the packet in question which has been seized is 52 grams in weight including the plastic bag as stated therein. The said memorandum Panchanama is appended at page No.38. The statement of the Pancha witnesses are appended at page No. 78 and 80 of the Application. The precise quantity (weight) of the seized contraband has not been enumerated by the prosecution at any place. Admittedly the provision

of Section 22(c) of the NDPS Act would not apply as the weight of the contraband below 50 grams as it would fall in the less than commercial quantity.

5. In view of the non-compliance of mandatory procedural law which is required to be scrupulously followed by the prosecution the applicant is entitled to be released on bail.

6. In view of the above, present Application is allowed in terms of prayer clause (A) 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. 15,000/- 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 a.m. to 12:00 p.m. 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 revocation of this order.

7. 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.

8. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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