

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4940 OF 2024

Anas Mohammad Jahangir Ansari

Applicant

.. (Accused No. 3)

Versus

State of Maharashtra

.. Respondent

.....

- Mr. Anish Pereira a/w Ms. Ashwini Achari i/by Mr. Taraq Sayed for Applicant
- Ms. Megha S Bajoria, APP for State
- Mr. R.P. Shinde, ASI, Bhiwandi Crime is present

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 05, 2025

P. C.:

1. Heard Mr. Pereira, learned Advocate for Applicant and Ms. Bajoria, learned APP for State.

2. Applicant – accused No. 3 has filed the present Application for regular bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "**BNSS**") in respect of Special Case No. 411/2024 in connection with C.R. No. 1224/2024 registered at Shantinagar Police Station, Bhiwandi for the offences punishable under Sections 8(c) and 22(b)(c) and 29 of the Narcotic Drug and Psychotropic Substances Act, 1985 (for short, "**NDPS**").

3. Applicant has been arrested on 02.06.2024. He is arraigned as accused No. 3 in the crime. Alleged contraband recovered from the

Applicant at the time of his arrest is 80 grams of Mephedrone (commonly called as MD) which is commercial quantity. The name of the Applicant has been disclosed by accused No. 2 after accused No. 2 was investigated and arrested on the disclosure of his name by accused No. 1. In a chance recovery accused No. 1 was apprehended with 22 grams of alleged contraband and accordingly the trail led to the present Applicant as alleged to be the supplier. It is seen that accused No. 1 was arrested on 01.06.2024 and the present Applicant on 02.06.2024. No money trail has been established *prima facie*.

4. Mr. Pereira would submit that in such a case of chance recovery from accused No. 1 where disclosure of the present Applicant's name is made, before the present Applicant is arrested, he ought to have been apprised of the grounds of his arrest which is mandatory under the provisions of Section 50 of the Cr.PC.. That not having been done and apprised to the Applicant, Mr. Pereira would persuade the Court to consider release of Applicant on bail on that ground alone.

5. *Per contra* Ms. Bajoria, learned APP would draw my attention to the intimation served on the Applicant dated 02.06.2024 before his arrest which is appended at page No. 54 and panchnama dated 02.06.2024 which appended at page No.55 of the Application. She would submit that if both these documents are seen by the Court, it would amount to the Applicant having been given adequate notice of

his grounds of arrest alongwith his legal right during search and seizure envisaged under Section 50 of the NDPS Act. Perusal of the first notice at page No. 54 shows that the Applicant was informed about his legal right for being searched under Section 50 of the NDPS Act which is contained in the title of the said document itself and there is a disclaimer at the bottom below the signature of the Investigating Officer (IO) and the two witnesses that Applicant has allowed himself to be searched and refused to be searched before the Magistrate. On search no recovery is made from Applicant. Second document at page No. 55 which is the seizure panchnama merely states that in the presence of some panchas, Applicant was apprehended by the IO and apprised of his rights under Section 50 of the NDPS Act. The said panchnama does not record any recovery made from the Applicant. Admittedly no recovery has been made from the present Applicant - accused No. 3. It is seen that the same IO and two witnesses have also signed the recovery panchnama dated 02.06.2024. No grounds of arrest have been admittedly conveyed by the prosecution to the Applicant under Section 50 of Cr.P.C. before arrest of Applicant.

6. Learned APP would persuade me to consider the name Anas appearing in Hindi on the said recovery panchnama as he having been informed by the IO about grounds of his arrest. I do not accept that

submission. If the said Hindi words are seen, the first word is "Keral" which is the name of principal accused No. 1 and second word "Lal Babu" is the name of accused No. 2 and the third word "Anas" is the name of accused No. 3 all written in hand in Hindi subsequently. Admittedly accused No. 1 was apprehended and arrested on 01.06.2024 and therefore the submission made by the learned APP stands rejected. Conveying the rights and grounds of arrest in an integral mandatory provision and mechanism envisaged under Cr.PC. It cannot be dispensed with. Admittedly in so far as present Applicant is concerned, his name has come on record after disclosure made by accused No. 2 who himself has been led to by accused No. 1. The aforesaid discrepancy is writ large on the face of record and prosecution has not been able to show whether grounds of arrest were conveyed to the Applicant. This being a procedural serious lapse, the Applicant is entitled for bail.

7. In view of the above, 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. 25,000/- with one or two sureties in the like amount;

- (ii) Applicant shall report to the concerned Investigating Officer 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 cancellation of this order.

8. 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 the merits of the case.

9. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
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Date:
2025.02.05
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