



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.5068 OF 2024**

Shafi Jahir Shaikh	...	Applicant
versus		
State of Maharashtra	...	Respondent

Ms. Ashwini Achari with Mr. Anish Pereira i/by Mr. Taraq Sayed, for Applicant.
Mr. A.S.Shalgaonkar, APP for State.
PSI Shingare, Ghatkopar Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 04 FEBRUARY 2025

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant (A1), who is arraigned in Special Case No.927 of 2024 arising out of Special LAC/C.R.No.383 of 2023 registered with Ghatkopar Police Station, Mumbai, for the offences punishable under Sections 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the Act), has preferred this application to enlarge him on bail.
3. Pursuant to an information on 10 November 2023 between 6 to 7 p.m., police mounted a surveillance near Dattaji Salvi Ground, Barvenagar, Bhatwadi, Ghatkopar (W), Mumbai. At about 6.55 p.m., the applicant, whose features matched with the description furnished by the informant, came near parking area of the said ground. The applicant was carrying a black bag. His movement appeared suspicious. After a while, Sultan @ Sartaj Inayat Khan

(A2), whose features also matched with the description furnished by the informant, came thereat and joined the applicant. The applicant and co-accused Sultan (A2) were accosted. They were apprised of their right under Section 50 of the Act, 1985. In the search of the applicant (A1), 60 gms Mephedrone (MD) was found. In the search of Sultan (A2) also, 20 gms MD was found. The contraband articles were seized and sealed.

4. During the course of investigation, Shaharukh Shaikh (A3), the alleged supplier of the applicant and co-accused Sultan (A2), came to be arrested on 22 December 2023 and 4 gms MD was recovered from his house. Post conclusion of the investigation, chargesheet came to be lodged against the applicant and co-accused for the offences punishable under Section 22(c) and 29 of the Act, 1985.

5. Ms. Achari, learned Counsel for the Applicant, submitted that the search and seizure is vitiated on account of non-compliance of the mandate contained in Section 42 of the Act, 1985. Compliance of the provisions contained in Section 50 of the Act, is also not free from infirmities. The material on record throws a serious cloud of doubt over the prosecution as CR number finds mention on the slip, which was affixed to the envelope in which the contraband was allegedly collected, before the registration of the first information report. Even the identity of the articles allegedly seized from the possession of the applicant and deposited with the muddemal room

(Malkhana) does not match. There is unexplained delay of three days in depositing allegedly seized contraband substance in the muddemal room.

6. Mr. Shalgaonkar, learned APP, submitted that there is no substance in the contention on behalf of the applicant that there is non-compliance of Section 42 of the Act, 1985. Inviting attention of the Court to the entries made in the general diary, being entry Nos.39 and 40, Mr. Shalgaonkar submitted that there is scrupulous compliance of the provisions contained in Section 42 of the Act. The ground of delayed deposit of the seized articles in the muddemal room, was also stated to be untenable. Since commercial quantity of MD was found in the possession of the applicant, the interdict contained in Section 37 of the Act, 1985, comes into play and, therefore, the applicant does not deserve to be enlarged on bail.

7. I have perused the material on record. Whether there are reasonable grounds to record a prima facie finding that the interdict contained in Section 37 of the Act, 1985, may not be attracted? The thrust of the submission of Ms. Achari was that there is non-compliance of the provisions contained in Section 42 of the Act, in as much as the Officer who had received the information has not complied with the statutory prescription. From the perusal of the general diary No.39, it appears that a specific information was received by the Police Head Constable Bhujbal. Thereupon, PSI Mohite entered the same in the general diary. However, it appears that the entry was made by

PSI Shingare and, the information so recorded, was also forwarded by PSI Shingare to the superior officials, as is evidenced by the general diary No.40.

8. Prima facie, it does not appear that Mr. Bhujbal has taken down the information. If it is construed that Mr. Mohite had received the information from Mr. Bhujbal, the the same was not forwarded in conformity with the mandate contained in sub-Section (2) of Section 42 of the Act, 1985 by Mr. Mohite to the superior officials. Prima facie, it does not appear that the person who received the information did reduce the same into writing and forward the same to the superior officer.

9. It would be contextually relevant to note that, in the case of Directorate of Revenue and Anr. V/s. Mohammed Nisar Holia¹, the Supreme Court, inter alia, observed, in the facts of the said case, that the statutory requirements had not been complied with as the person who had received the information first did not reduce the same into writing. The Officer who received such information was bound to reduce the same in writing and not the person who heard about the same.

10. In the case of Sanobar Shafiq Khotwal V/s. State of Maharashtra², it was enunciated that one who receives the information must forward it to the superior himself. Since there was clear infraction of the said provision, the Court was inclined to accept the submission of breach of Section 42(2) of the

1 (2008) 2 SCC 370

2 BA No.3337 of 2021 dated 14 Oct. 2022

Act, 1985.

11. In the case of Sarja Banu and Anr. v/s. State³ the Supreme Court enunciated that the compliance of Section 42 was mandatory and that was a relevant fact to be taken into account while considering the bail application.

12. The aforesaid pronouncements were adverted to by this Court in the case of Kamlesh Harichand Rajpurohit V/s. The State of Maharashtra⁴ while releasing the accused on bail, inter alia, on the ground of prima facie non-compliance of the mandate contained in Section 42 of the Act, 1985.

13. The second limb of the submission of Ms. Achari that the seizure becomes suspect as the CR number finds mention on the label pasted on the envelope containing the contraband substance allegedly seized under the seizure panchanama, also carries substance. Attention of the Court was invited to the photograph (page 89) of the samples taken at the time of inventory before the learned Magistrate. Prima facie, it appears that LAC/CR No.383 of 2023 finds place on the label pasted on the envelope before the CR came to be registered. Ms. Achari placed reliance on an order passed by this Court in the case of Wasim Nurujjima Khan V/s. State of Maharashtra⁵, wherein this Court had, inter alia, noted that, in somewhat similar situations, where the crime number was mentioned on the documents at a point anterior to the registration of FIR, this Court has exercised the discretion to enlarge

3 BA No.3493 of 2021 dated 14 October 2022

4 BA No.590 of 2023

5 BA No.4849 of 2024 dt. 18 December 2024

the accused on bail as that created a serious doubt about the veracity of the prosecution case. This Court, inter alia, observed as under :

“10. In somewhat similar situations where the crime number was mentioned on the documents at a point anterior to the registration of FIR, this Court has exercised the discretion to enlarge the accused on bail as that created a serious doubt about the veracity of the prosecution case. In the case of Shabbir Usman Shaikh V/s. The Union of India and Anr.⁶ on which reliance was placed by the learned Counsel for the Applicant, this Court had noted two earlier orders in the cases of Zaid Zahir Rana V/s. The State of Maharashtra⁷ and Chand Riyaz Shaikh s/o Riyaz Shaikh V/s. The Union of India and Anr.⁸”

14. It must be noted that, the aforesaid circumstance of finding crime number on the label pasted on the envelope at site at the time of seizure, by itself, may not command decisive significance. There could be factors which would explain the said circumstance. However, if considered in conjunction with the prima facie non-compliance of the provisions contained in Section 42 of the Act, the absence of explanation regarding the aforesaid discrepancy, assumes significance. In view of the aforesaid prima facie infirmities, an inference may be justified that the applicant may not be eventually found guilty of the offences for which he has been arraigned in this case. The Court is not informed that the applicant has antecedents.

6 BA No.731 of 2024 dt. 13 August 2024

7 BA No.1486 of 2023 dt. 30 Oct. 2023

8 BA No.3269 of 2022 dt. 13 July 2023

15. At any rate, the applicant has been in custody since 10 November 2023. Having regard to the large pendency of cases, it is unlikely that the trial can be concluded in a reasonable period.

16. I am, therefore, persuaded to exercise discretion in favour of the applicant.

17. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Shafi Jahir Shaikh be released on bail in C.R.No.990 of 2023 (Special LAC/C.R.No.383 of 2023) registered by Ghatkopar Police Station, Mumbai on furnishing a PR bond in the sum of Rs.1,00,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence before Ghatkopar Police Station, Mumbai on first Monday of every month between 11 am to 1 pm for a period of three years or till the conclusion of the trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.

(v) On being released on bail, the applicant shall furnish his contact

number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N.J.JAMADAR, J.)