

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 5211 OF 2024

Aarafat Iqbal Kazi

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Ayaz Khan a/w Mr. Dilip Mishra, Ms. Zehra C. and Ms. Mallika Sharma, for the Applicant.
- Mr. Ajay S. Patil, APP for Respondent – State.
- Mr. N.T. More, PSI, Pydhonie Police Station, present.

CORAM : MANISH PITALE, J.

DATE : 20th JANUARY, 2025.

P. C. :

1. Heard learned counsel for the applicant and learned APP for the respondent-State.

2. The applicant herein is one of the four accused persons facing prosecution on the basis of First information Report No.129 of 2023, dated 04th November, 2023, registered with Police Station Pydhonie, Mumbai, for offences under Sections 8(c), 20(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. Accused No.3 was granted bail by this Court by an order dated 09th September, 2024, passed in Bail Application No.3010 of 2024. The learned counsel for the applicant fairly states that the present applicant i.e.

accused No.1 is not seeking bail on the ground of parity.

4. The learned counsel for the applicant has referred to the documents filed alongwith the charge-sheet and he submits that there are glaring contradictions to show that the prosecution case is vitiated and therefore, the first limb of the twin test contemplated under Section 37 of the NDPS Act is satisfied, in the facts and circumstances of the present case. He further submits that the applicant has no criminal antecedents and therefore, this Court may consider allowing the present application.

5. On the other hand, the learned APP submits that the contentions raised on behalf of the applicant and the apparent contradictions highlighted on his behalf, are all matters for trial and therefore, this Court may not show any indulgence to the applicant. It is submitted that minor discrepancies ought not to inure to the benefit of the applicant, as this would be contrary to the stringent test contemplated under Section 37 of the NDPS Act and the objects and reasons for which the aforesaid Act has been enacted.

6. This Court has considered the rival submissions. It is found that there is indeed substance in the contentions raised on behalf of the applicant, as the contradictions in the present case appear to be going to the root of the matter and it is found that such contradictions would indeed vitiate the prosecution case when it is taken up for trial. It is an admitted position that as

on today charge is yet to be framed, while the applicant has remained incarcerated from 04th November, 2023 i.e. for a period of more than 1 year and 2 months.

7. Upon perusal of the material on record the following contradictions are noticed:

- (i) The statement of the complainant, leading to registration of the FIR, the statements of the witnesses, as also the *panchnama* executed on 04th November, 2023, record that the contraband i.e. 1 kg and 15 gm *Charas* recovered from the applicant was kept in a saffron coloured plastic bag, which in turn was kept in a Pista colour paper packet at the time of the execution of the *panchnama* and when the contraband was recovered from the applicant. This is in-contradiction to the letter dated 06th November, 2023, addressed to the Senior Police Inspector when the contraband was deposited in Azad Maidan Unit at Mumbai, as it is specifically recorded that 1 kg and 15 gm. *Charas* was kept in a white coloured transparent bag. It is further reiterated in the application moved before the Magistrate for undertaking the procedure contemplated under Section 52A of the NDPS Act. Here again, it is

specifically recorded that the 1.15 kg. *Charas* was produced in a white coloured transparent bag, which is clearly contradictory to the reference to the saffron coloured plastic bag recorded in the statement, leading to registration of the FIR and the specific statements of the *panchas* recorded on 04th November, 2023, at the time of the seizure. This goes to the root of the matter.

- (ii) The *panchnama* dated 04th November, 2023, simply records that after the saffron coloured plastic bag, in which the contraband was stored, was in turn kept in a pista coloured paper bag and a label was affixed on the same and then it was sealed. There is no reference to the label then being signed by the *panchas*, the Officer or the applicant/accused person. Yet, when the packets were weighed and photos were clicked before the Magistrate, while conducting the procedure contemplated under Sections 52A of the NDPS Act, signatures of all the aforesaid persons are found on the label affixed to the packet. This too is an aspect which goes to the root of the matter.

- (iii) The *panchnama* executed on 04th November, 2023, when

the contraband was seized does not refer to samples अ 1 and अ 2 being prepared. The exercise carried out under Section 52A of the NDPS Act before the Magistrate i.e. inventory *panchnama* dated 29th December, 2023, records for the first time about drawing of samples अ 1 and अ 2. But, when this is considered alongwith letter dated 01st January, 2024, addressed to the Government Laboratory to which the samples were sent for analysis, it is specifically recorded that the samples अ 1 and अ 2 were prepared on 04th November, 2023, at the stage of execution of the *panchnama* and seizure of the contraband. This is also a contradiction that has the tendency of vitiating the prosecution case.

- (iv) There is substance in the contention raised on behalf of the applicant that from the very inception, contradictions can be noted in the manner in which the investigating authority proceeded on the basis of secret information allegedly received at the Pydhonie Police Station. The statement of the complainant/informant, which led to registration of the FIR records that on 04th November, 2023 at 11:00 a.m. information was received at Pydhonie

Police Station about contraband *Charas* being handled.

But, the statements of the two *panchas* show that they were approached for acting as *panchas* at 10:50 a.m. and 10:55 a.m. respectively, thereby indicating that they were approached even before the secret information was received in the first place at the Pydhonie Police Station.

- (v) A perusal of the statement of the informant/complainant surprisingly does not make any reference to the *panchnama* prepared at the time when the contraband was allegedly seized from the applicant, although the *panchnama* is said to have been completed at 15:20 hours on 04th November, 2023 and the FIR on the basis of the statement was registered on 15:30 hours on the same day.

8. This Court is of the opinion that although the learned APP has tried to impress upon this Court that the above contradictions would all be matters for trial, a strong *prima facie* case is indeed made out by the applicant in his favour, as such contradictions can be said to be going to the very root of the matter. This Court is satisfied that the first limb of the twin test contemplated under Section 37 of the NDPS Act is satisfied by the applicant. Since he has not been shown to have any criminal antecedents, the second limb is also stands satisfied. Therefore, the application deserves to be allowed.

9. Accordingly, the application is allowed in the following terms:

- (A) The applicant shall be released on bail in connection with FIR No.129 of 2023 dated 04th November, 2023, registered at Police Station Pydhonie, Mumbai, on furnishing PR Bond of ₹ 50,000/- and one or two sureties in the like amount to the satisfaction of the Trial Court;
- (B) The applicants, upon being released on bail, shall report to Pydhonie Police Station, Mumbai on first Monday of each month between 10:00 a.m. and 12:00 noon during the pendency of trial;
- (C) Upon release, within one week, the applicant shall inform the Investigating Officer as well as the Trial Court about his contact numbers and residential address and update the same in case of any change;
- (D) The applicant shall co-operate with the trial Court in completing the proceedings expeditiously and attend the proceedings before the trial Court on each and every date, unless specifically exempted;
- (E) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not undertake any action that may influence the informant, witnesses and

other persons concerned with the case.

10. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions are violated.

11. It is also clarified that the observations made in this order are limited to the disposal of the present bail application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

12. The application is disposed of.

(MANISH PITALE, J.)