

Arun Sankpal

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 5290 OF 2024

Santosh Bhagwat Sonawane ...Applicant
Versus
The State of Maharashtra ...Respondent

Ms. Munira Palanpurwala, with Sumaiya Khan & Kainat Sayed, for
the Applicant.
Mr. P. P. Devkar, APP, for the State.

CORAM: N. J. JAMADAR, J.
DATED: 30th JANUARY, 2025

ORDER:-

1. Heard the learned Counsel for the parties.
2. The Applicant (A4), who is arraigned in Special Case No. 953 of 2023 arising out of CR No. 24 of 2022 registered with Anti-Narcotic Cell for the offences punishable under 8(c) read with Section 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act, 1985"), has preferred this Application to enlarge him on bail.
3. The indictment against the Applicant and co-accused Ashok Babu Gurmitkar (A1), Lakshmi Jamadar Alias Akka (A2), Deepak Ashok Pawar (A3), Pravin Salve Alias Paras (A5), Nagesh Ashok Pawar (A6), Parshuram Sonawane Alias Parsha Alais Parsu (A7) and Aiman Shaikh Alias Aayan Alias Shaikh Bhai (A8) is that the Applicant and the co-accused were dealing in the illicit trade of narcotic substance,

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mephedrone (MD). Lakshmi (A2) had made a disclosure. Pursuant to the said disclosure the Applicant and co-accused were apprehended.

4. It is the prosecution case that the Applicant, in turn, made a disclosure statement on 10th February 2023 to show the contraband substance, which was concealed in the motorcycle which the Applicant was riding on the previous day, i.e., 9th February 2023, when he was apprehended by the police. Pursuant to the said discovery a plastic bag containing mephedrone was recovered from the dicky of the scooty bearing registration No. MH01 DF-5703. The contraband substance weighed 107 gm.

5. Ms. Palanpurwala, learned Counsel for the Applicant, submitted that most of the accused have been enlarged on bail by the Supreme Court, this Court and the learned Special Judge. Ashok (A1) was released on bail by the Supreme Court as he had undergone more than one year and six months incarceration. This Court has released Parshuram (A7) who was named by Lakshmi (A2) alongwith the Applicant. The learned Special Judge has enlarged the other co-accused, Deepak (A3), Pravin Salve (A5), Nagesh (A6) and Aiman Shaikh (A8) on bail. Therefore, the Applicant is entitled to be enlarged on bail on the ground of parity.

6. Even otherwise Ms. Palanpurwala would urge, nothing was found when the Applicant was allegedly apprehended on 9th February 2023.

The alleged discovery leading to the recovery of contraband substance cannot be fastened to the Applicant, as the search was conducted after sunset and before sunrise in breach of the provisions contained in Section 42 of the NDPS Act 1985.

7. The learned APP resisted the prayer for bail. It was submitted that commercial quantity of mephedrone was found in possession of the Applicant and, therefore, the Applicant cannot claim parity. It was further submitted that the Applicant has antecedents.

8. I have carefully perused the material on record. It is necessary to note that Ashok (A1) who was allegedly found in possession of 64gm of mephedrone; a commercial quantity, has been released on bail by the Supreme Court considering the long period of incarceration. The other co-accused viz, Deepak (A3), Pravin Salve (A5), Nagesh (A6), Parshuram (A7) and Aiman Shaikh (A8) have also been released on bail.

9. In the aforesaid view of the matter, the prayer of the Applicant for bail on the ground of parity cannot be discarded for the reason that commercial quantity was found in the possession of the Applicant. For that matter, Ashok (A1) was also found in possession of the commercial quantity.

10. It is also imperative to note that the no contraband substance was allegedly recovered from the possession of the Applicant when the

Applicant was apprehended on 9th February 2023. The weight to be given to the discovery leading to the recovery of the contraband substance from the dickey of the scooty, which the Applicant was allegedly riding, on the day he was apprehended, appears to be a matter for adjudication at the trial.

11. *Prima facie*, there appears some substance in the submission on behalf of the Applicant that the prosecution may be required to surmount the challenge of non-compliance of the mandate contained in Section 42 of NDPS Act 1985 as the search and seizure appears to have taken place after the sunset.

12. In any event, the Applicant has been in custody since two years. Having regard to the large pendency of cases, the number of accused and the number of witnesses which the prosecution may be required to examine, in this case, it appears extremely unlikely that the trial can be concluded within a reasonable period. Thus, long period of incarceration without a real prospect of conclusion of the trial also persuades the Court to exercise the discretion in favour of the Applicant.

13. I have perused the report indicating the antecedents of the Applicant. In all six crimes appear to have been registered against the Applicant. Out of them three crimes have been registered for allegedly having committed offences against body and property.. Two crimes are

for breach of prohibitory orders under the Maharashtra Police Act 1951. One crime has been registered for the offences punishable under Section 22(c) and 29 of the NDPS Act 1985. In the said case the Applicant is stated to have been enlarged on bail.

14. In the totality of the circumstances, it does not appear that the antecedents of the Applicant are such that they would dissuade the Court from exercising the discretion in favour of the Applicant.

15. The long period of incarceration coupled with the *prima facie* infirmity in search and seizure and the ground of parity dilute the rigor of Section 37(1)(b)(ii) of the NDPS Act 1985.

16. Hence, the following order.

: O R D E R :

- (i)** Application stands allowed.
- (ii)** Santosh Bhagwat Sonawane, the applicant, be released on bail in Special Case No. 953 of 2023 arising out of CR No. 24 of 2022 registered with ATS, Kalachowki Unit, Mumbai, on furnishing a P. R. Bond of Rs.1,00,000/- with one or more sureties in the like amount to the satisfaction of the learned Special Judge.
- (iii)** The applicant shall mark his presence at ATS, Kalachowki Unit, Mumbai, on the first Monday of every month between 10.00 am. to 12.00 noon for the 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 not indulge in identical activities for which he has been arraigned in this case.
- (vii) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (viii) 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 stands disposed.

[N. J. JAMADAR, J.]