

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.5414 OF 2024

Azim Yusuf Khan	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Ms. Sheela Gupta a/w. Mr. Ashish Varnekar, Advocates for Applicant.
 - Ms. Rajshree V. Newton, APP for Respondent – State of Maharashtra.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 06, 2025

P.C.:

1. Heard Ms. Gupta, learned Advocate for Applicant and Ms. Newton, learned APP for Respondent – State of Maharashtra.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short ‘**Cr.P.C.**’) seeking Bail in connection with C.R. No.195 of 2022 for offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘**NDPS Act**’) and Section 142 of Maharashtra Police Act, 1951.

3. After hearing Ms. Gupta, learned Advocate for Applicant and Ms. Newton, learned APP on 04.02.2025, following order was passed:-

“**1.** *Mentioned out of turn at the time of rising of the Court.*

2. *Heard Ms. Gupta, learned Advocate for Applicant and Ms. Newton, learned APP for Respondent – State of Maharashtra.*

3. *This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking Bail in connection with C.R. No.195 of 2022 for offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act") and Section 142 of Maharashtra Police Act, 1951.*
4. *The name of Applicant has been taken / disclosed by Accused No.1 – Sarfaraz Anwar Alam when he was apprehended in a chance recovery during patrolling by Officers of Respondent.*
5. *At that time 100 grams of Mephedrone (contraband) was seized from Accused No.1 at his behest. Present Applicant was apprehended and arrested and at that time he was found in possession of 20 grams of Mephedrone which is admittedly intermediate non-commercial quantity.*
6. *Learned Trial Court by order dated 28.03.2023 allowed the Bail Application of the Applicant on the ground that the contraband seized from him was non-commercial quantity, there was no independent evidence except in the form of CDR, no money trial was prima facie established or there was no other evidence to show complicity and nexus or conspiracy of Applicant before me with Accused No.1. Applicant was therefore released on bail thereafter.*
7. *However between March-2023 and November-2024, it is seen that Applicant remained absent before Trial Court, thus violating conditions for grant of bail as per the order of Trial Court. Applicant was thereafter arrested after NBW was issued by the Trial Court. Applicant then filed Application below Exhibit-15 for bail. Trial Court was therefore constrained to consider Application filed below Exhibit-15 and hold that despite the Applicant having been accorded opportunity to defend himself he failed to abide by the conditions of bail and therefore his Application below Exhibit-15 seeking regular bail was rejected. Applicant has therefore moved the present Application before me.*
8. *Ms. Gupta would submit that Applicant is a poor labourer and has hand to mouth existence and is required to take care of his old ailing parents. This ground may not be the correct ground for seeking bail. She would submit that if released on bail Applicant shall ensure that he shall scrupulously follow all conditions whatsoever Court may impose. What persuades me to consider the Application are the reasons returned by the Trial Court while granting bail to Applicant previously. Those reasons are on merits. However Applicant will have to abide by the conditions of bail.*
9. *Ms. Newton, learned APP for Respondent is directed to take appropriate instructions and make her submissions on the next adjourned date.*
10. *Stand over to 06th February, 2025. To be placed under the caption 'First on Board'."*

4. The grounds in the present Bail Application persuade me to consider case of Applicant in view of the Trial Court having released Applicant on bail on the merits of the Bail Application. Incarceration of Applicant in on the count of non-compliance of the condition of not remaining present for the trial.

5. Applicant before me shall assures the Court that he shall henceforth remain present on the scheduled dates of hearing. An opportunity deserves to be given to the Applicant lest Applicant would be incarcerated in prison which would be against Applicant's right of liberty when the Trial Court itself had granted him bail.

6. I am informed that trial has commenced. Taking assurance of Applicant given in the Application an opportunity deserves to be given to him, the present Application stands allowed. Applicant is granted bail for the reasons which are stated by this Court in the aforementioned order as also, the reasons stated in the Trial Court's order. More importantly considering the intermediate quantity of the alleged contraband recovered from the Applicant, I am inclined to allow the present Application.

7. In view of the above, the Applicant is entitled to be enlarged on bail subject to following terms and conditions:-

- (i) Applicant is directed to be released on bail on
furnishing P.R. Bond in the sum of Rs.50,000/-

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 influence any of the witnesses or tamper with the evidence in any manner;
- (v) 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;
- (vi) Any infraction of the above conditions shall entail the prosecution to seek cancellation of this order.

8. The aforesaid observations are *prima facie* on the basis of

record of the case which has been argued before me and is an expression of opinion by this Court only for the purpose of enlargement of Applicant on bail and shall not influence the trial in the present case.

9. Bail Application stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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by HARSHADA
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