



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

BAIL APPLICATION NO.168 OF 2025

Jabir Javed Ansari @ Sonu DX ... Applicant

versus

The State of Maharashtra ... Respondent

Ms. Munira Palanpurwala with Ms. Sumaiya Khan, Ms. Deepa Amati, Ms. Kainat Sayyad, for Applicant.
Mr. P.P.Devkar, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 10 FEBRUARY 2025

P.C.

1. Heard the learned Counsel for the parties.
2. The Applicant, who is arraigned in Special Case No.1292 of 2023 arising out of C.R.No.140 of 2023 registered with Shivaji Nagar Police Station for an offence punishable under Section 22(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985, has preferred this application to enlarge him on bail.
3. On 3 February 2023 at about 5.45 p.m., near 90 ft. Road, Shivaji Nagar, Gowandi, while the police were on patrolling duty, co-accused Mehtab @ Totla Shaikh (A1) was found moving suspiciously. He was accosted. In the presence of the public witnesses, his personal search was conducted. 20

gms of Mephedrone (MD) was recovered from his possession. Mehtab (A1) disclosed that the contraband was being supplied by the applicant.

4. On 14 May 2023, the applicant was arrested. On 15 May 2023, the applicant made discovery to show the place where the contraband was concealed. The applicant took the police party to a place near dumping ground and pointed out a sofa beneath which the contraband substance was concealed in a pit. The said substance was recovered. It weighed 56 gms. Post completion of investigation, chargesheet came to be lodged.

5. Ms. Palanpurwala, learned Counsel for the Applicant, submitted that the applicant has been roped in on the basis of the statement of the co-accused. No incriminating article was found on the person of the accused when he was apprehended. Discovery under Section 27 of the Indian Evidence Act is infirm as the contraband substance was allegedly recovered from the place open and accessible to all.

6. Moreover, there is non-compliance of the provisions contained in Section 42 of the Act, 1985, as the information disclosed by the accused was neither recorded into writing nor the said information was forwarded to the immediate official superior. There is a glaring discrepancy regarding the substance which was allegedly recovered pursuant to the discovery made by the applicant and the sample which was forwarded to, and analysed by, the FSL. The seizure memo indicates that a crystal substance was recovered

from the bag which the applicant allegedly took out from the pit. However, CA report (page 113) indicates that the sample was of white powder.

7. Ms. Palanpurwala further submitted that the applicant has been in custody since 14 May 2023. Therefore on the count of long period of incarceration also, the applicant deserves to be enlarged on bail.

8. Mr. Devkar, learned APP, resisted the prayer for bail. It was submitted that 56 gms MD, which is a commercial quantity, has been recovered at the instance of the applicant, and, therefore, the interdict contained in Section 37 of the Act, 1985 comes into play. The applicant, thus, does not deserve to be enlarged on bail.

9. Evidently, the applicant came to be apprehended on the basis of the disclosure statement made by the co-accused. It is trite, a statement made by one accused is not a legal piece of evidence qua the co-accused. Moreover, it does not appear that the said disclosure made by the co-accused, which appeared to be otherwise than by way of discovery under Section 27 of the Indian Evidence Act, was reduced into writing and the said information was forwarded to the immediate official superior. Secondly, it is necessary to note, when the applicant was apprehended, no contraband substance was found in his possession. Thirdly, the entire prosecution case rests on the discovery made by the applicant leading to the recovery of 56 gms of contraband substance in the form of sparkling crystalline substance.

10. Conversely, CA report indicates that the sample which was received for analysis was in white powder form. It is pertinent to note that the entire prosecution case rests on the recovery of the contraband substance pursuant to the discovery made by the applicant. In this view of the matter, the discrepancy in the substance which was seized and the sample which was sent for analysis assumes significance. Furthermore, the question as to whether, in a case of the present nature, the discovery can be fastened to the applicant when the substance was recovered from a place which was used as a dumping ground, would be a matter for adjudication at the trial. These factors make out a prima facie case in favour of the applicant.

11. The applicant has been in custody since 14 May 2023. Having regard to the large pendency of cases, it is unlikely that the trial can be concluded within a reasonable period. This factor also weighs in the exercise of discretion.

12. The Court is not informed that the applicant has antecedents. Thus, the Court may draw an inference that the applicant may not indulge in identical offences, if enlarged on bail. I am, therefore, inclined to release the applicant on bail.

13. Hence, the following order :

ORDER

- (i) The Application stands allowed.

(ii) The Applicant – Jabir Javed Ansari @ Sonu DX be released on bail in C.R.No.140 of 2023 registered with Shivaji Nagar 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 Shivaji Nagar 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 the co-accused and the

trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N.J.JAMADAR, J.)