

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 609 OF 2025

Mohd Firoz Abdul Shakur Sayed

Applicant

.. (Accused No. 2)

Versus

The State of Maharashtra

.. Respondent

.....

- Mr. Kamlesh M. Satre & Mr. Amol M. Thombre for Applicant
- Ms. Mahalakshmi Ganapathy, APP for Respondent - State

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 02, 2025

P. C.:

1. Heard Mr. Satre, learned Advocate for Applicant and Ms. Ganapathy, learned APP for Respondent - State.

2. Applicant - accused has filed the present Application for regular bail under Section 483 of Bharatiya Nagarik Suraksha Sanhita (for short "**BNSS**") in connection with NDPS Special Case No. 1175/2024 vide C.R. No. 102/2024 registered with ANC, Azad Maidan Unit, Mumbai for the offences punishable under Sections 8(c) r/w 22(c) and 29 of the Narcotic Drug and Psychotropic Substances Act, 1985 (for short "**NDPS Act**"). Applicant is arrested on 22.12.2023.

3. The Applicant has been indicted in the present offence based on the disclosure made by accused No. 1 who was apprehended by the prosecution in possession of commercial quantity of the alleged

contraband, namely 120 grams of MD. Admittedly record shows that no conscious recovery of possession of any alleged contraband has been made from the Applicant. Insofar as the Applicant is concerned, he has disclosed name of accused No. 3 but from his possession amount of Rs. 22 Lakhs has been recovered.

4. Ms. Ganapathy, learned APP would persuade the Court to consider the credentials of the Applicant and he having several antecedents namely at least 3 specific cases registered against him under NDPS Act in JJ Marg Police Station, Mumbai. She would submit that, notwithstanding the absence of any recovery of the alleged contraband from the conscious possession of the Applicant, the Court should consider the applicability of the rigors of Section 37 of the NDPS Act, in view of his role having been deciphered by accused No.1. She would submit that according to accused No. 1, supplier of the alleged contraband is the present Applicant and therefore his Application for bail should not be considered. In order to supplement the prosecution case, she would draw the attention of this Court to the WhatsApp conversation details appended to the present Application, which according to her would *prima facie* indicate that Applicant was in active communication with accused Nos. 1 and 3 thereby suggesting his involvement in dealing with the alleged contraband. She would

persuade the Court that considering the complicity of the present Applicant in the crime, present Bail Application be rejected.

5. I have heard learned Advocates at the Bar and with their able assistance perused the record of the case.

6. *Prima facie* it is seen that the case of the prosecution against the present Applicant is solely based upon the disclosure statement made by accused No. 1 which is recorded by the prosecution in enquiry under the provisions of Section 67 of the NDPS Act. Supreme Court in the case of *Tofan Singh v. State of Tamil Nadu*¹ has categorically held that statement made before the NDPS officers are akin to the statement made to the police officers and therefore they would hit by the provisions of Section 25 of the Indian Evidence Act, 1872 and would be *prima facie* inadmissible at the stage for grant of bail. The decision of the Supreme Court has been adverted to by various High Courts and this Court while echoing the said decision. It covers the Applicant's case herein.

7. Applicant is arrested on 22.12.2023. No recovery of any alleged contraband has been made from his possession by the prosecution. Investigation is completed and chargesheet has been filed. Considering the aforesaid *prima facie* material placed on record which is borne out from the record itself and indictment of Applicant

¹ (2021) 4 SCC 1

solely on the basis of statement of co-accused, further incarceration of the Applicant is unwarranted. Needless to state that apprehension expressed by learned APP can be considered by imposing appropriate conditions. In that regard, one of the additional condition for granting bail would be that Applicant shall be prohibited from entering the jurisdiction of South DCP Zone (I) and (II) of the Mumbai region until completion of the trial. Hence, Bail Application is allowed subject to the 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) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on

a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

- (v) 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;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court; Applicant shall deposit his passport, if any, with the trial Court within 2 weeks from the date of release from prison;
- (vii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (viii) Applicant shall not enter the jurisdiction of South DCP Zone (I) and (II) of the Mumbai region until conclusion of the trial until the completion of trial, save and except to attend the Police Station as directed herein;
- (ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

8. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

9. Bail Application is allowed and disposed.

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[MILIND N. JADHAV, J.]

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by RAVINDRA
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