

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1497 OF 2025

Geeta Uday Swami

.. Applicant

Versus

State of Maharashtra

.. Respondent

.....

- Mr. Takar Jogendra, Advocate for Applicant.
- Ms. Shilpa K. Gajare – Dhumal, APP for Respondent.

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 17, 2025

P.C.:

1. Heard Mr. Takar, learned Advocate for Applicant and Ms. Gajare – Dhumal, learned APP for Respondent.

2. Applicant is a woman who is incarcerated for past more than 2 years in offences punishable under provisions of the Narcotics and Psychotropic Substances Act, 1985 (for short '**NDPS Act**') for having been apprehended and arrested alongwith 80 grams of alleged contraband namely Mephedrone which according to prosecution case has been recovered from left pocket of the gown that she was wearing.

3. There are several transgressions argued by Mr. Takar which on going through the record of the case are *prima facie* borne out. Principal transgressions are that of arrest of Applicant.

4. She was given an appraisal letter under Section 50 of the NDPS Act. Copy of the same is appended at page No.89 of the

Application. The said letter does not bear the signature of the witnesses and as such *prima facie* becomes a suspect. The seizure panchnama *prima facie* shows that Applicant was apprehended and arrested between sunset and sunrise but most importantly at the time of search there was a male constable present which once again is a transgression of procedural statutory law which prosecution needs to explain.

5. Though Applicant is apprehended with commercial quantity of the alleged contraband and rigours of Section 37 would apply is what prosecution may argue but prosecution may say so only if prosecution follows the procedure established under the NDPS Act.

6. That apart, during sampling and certification of the alleged contraband *prima facie* transgression is observed by the Court. The prosecution needs to answer the above issues, as also inform the Court the status of trial since incarceration of Applicant is for more than 2 years 1 month in the present case which would entitle the Applicant to be enlarged on bail on the ground of long incarceration.

7. Applicant has no criminal antecedents and *prima facie* there is no certainty that trial will commence since charge has also not been framed till date.

8. *Prima facie* case is made out for bail by the Advocate for Applicant. Advocate for Applicant relies upon decisions of the Court in

support of his case in the following cases:-

(i) *Mohd. Muslim A Hussain Vs. State (NCT of Delhi)*¹;

(ii) *Rabi Prakash Vs. The State of Odisha*²; and

(iii) *Naziya Rabiul Islam @ Shobha Devdas Mondol Vs. The State of Maharashtra*³.

9. Learned APP shall take cognizance of the above submissions and accordingly apprise the Court on the next adjourned date. It is clarified that if prosecution does not come with any instructions on the next date on the above issues which have been noted by the Court emanating from the record, Applicant shall be granted bail. If matter reaches after 04:30 p.m., learned APP is directed by the Court to remain present. If learned APP is not present, Application shall still be decided on its own merits.

10. Stand over to **24th April, 2025.**

H. H. SAWANT

[MILIND N. JADHAV, J.]

1 2023 LiveLaw (SC) 260 (Criminal Appeal No(s). of 2023 [@ Special Leave Petition (CRL) No(s). 915 of 2023 decided on 28.03.2023).

2 2023 LiveLaw (SC) 533 [Special Leave to Appeal (Crl.) No(s).4169/2023 decided on 13.07.2023.]

3 Bail Application No.487 of 2024 decided on 08.02.2024.