

Ms. Munira Palanpurwala with Ms. Kainat Sayed, Ms. Sumaiya Khan, Ms. Deepa Amatri, for Applicant.
Mrs. Shilpa Dhumal, APP for State.

DATE : 25 SEPTEMBER 2025

1. Heard the learned Counsel for the parties.
2. The Applicant, who is arraigned in C.R.No.194 of 2022 registered with Mumbai Anti Narcotic Cell, for the offences punishable under Sections 20(b), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, has preferred this application to enlarge him on bail.
3. On 27 December 2022, while ANC police were on a patrolling duty at MHB Colony, Gorai Road, Borivali, Mumbai, the applicant was found moving in a suspicious manner. The applicant was accosted. After apprising the applicant of his right under Section 50 of the Act, 1985, in the presence of public witnesses, a personal search of the applicant was conducted. The applicant was found carrying a plastic bag with a zip lock. 15 LSD Dot papers were found kept in the said bag. Sample was collected. The test turned

positive for Lysergic acid. The papers and LSD dots weighed 0.43 gms. The contraband articles were seized and sealed. The applicant came to be arrested. Pursuant to the disclosure made by the applicant, co-accused were apprehended and charas weighing 460 gms and 18 tablets of MDMA were seized from the co-accused. Post completion of investigation, chargesheet came to be lodged.

4. Ms. Palanpurwala, learned Counsel for the Applicant, would urge that, the seizure of LSD dots papers from the applicant is fraught with infirmities. Though in the panchanama dated 27 December 2022 and the inventory before the learned Magistrate under Section 52-A of the Act, indicate that LSD dot papers were stored in a *pista* (green) colour envelope, yet, the forwarding letter indicates that 15 LSD dots were forwarded to CA in a brown envelope. Moreover, the CA report indicates that the sample allegedly collected at the time of seizure i.e. blackish coloured square paper dot in a press sealed polythene bag (Exh.1/1), did not show the presence of Lysergide. CA report thus belied the prosecution version that the sample collected at the time of the seizure tested positive for Lysergide.

5. In any event, learned Counsel for the Applicant would urge, the applicant has been in custody since two years and nine months. It is unlikely that the trial can be concluded in a near future. Thus on account of long incarceration also, the applicant is entitled to be enlarged on bail.

6. Learned APP countered the submissions on behalf of the applicant. It was submitted that the applicant endeavours to take benefit of a typographical error in the forwarding letter. On the substance of the matter, according to the learned APP, no case for grant of bail is made out as the interdict contained in Section 37 of the Act, 1985, comes into play.

7. I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it. Prima facie, it appears that there is a significant disconnect in the colour of the bag in which LSD papers allegedly recovered from the applicant were stored and the bag in which those LSD papers were allegedly forwarded to CA. The issue is not merely that of change in the colour of the bag, as was sought to be canvassed by the learned APP, but also the identity of the contraband substance which was allegedly recovered from the applicant and the one sent to FSL for analysis.

8. Secondly, the fact that the CA report categorically indicates that the sample (Exh/1/1) did not show presence of Lysergide, prima facie, enures to the benefit of the applicant as that was the only sample which was allegedly tested at the time of the seizure.

9. In the aforesaid view of the matter, the prosecution may be required to discharge heavy onus to establish that the very articles which were allegedly seized from the applicant were forwarded to FSL. Resultantly, it can be said

that the applicant has succeeded in making out a strong prima facie case. The first of the twin tests envisaged by Section 37 of the Act, can thus be said to have been satisfied. The Court is not informed that the applicant has antecedents. Therefore, the second test also can be said to have been satisfied.

10. In any event, the applicant has been in custody since 27 December 2022. A period of two years and 9 months has elapsed. It is extremely unlikely that the trial can be concluded within a reasonable period. It is trite that a long period of incarceration without realistic prospect of expeditious conclusion of the trial impinges upon the right of the accused to have a speedy trial, which is a facet of right to life guaranteed under Article 21 of the Constitution of India. In the face of such long period of incarceration, the statutory restrictions in the matter of grant of bail melt down. I am, therefore, inclined to exercise the discretion in favour of the applicant.

11. Hence, the following order :

ORDER

(i) The Bail Application stands allowed.

(ii) The applicant – Yash Ganesh Mogaveera be released on bail in C.R.No.194 of 2022 registered with ANC Kandivali Unit, 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 ANC, Kandivali Unit, 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) The applicant shall surrender his passport before the Special Court and shall not leave India without prior permission of the Special Court.

(vi) 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.

(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 the co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

(N.J.JAMADAR, J.)