

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.423 OF 2022**

Ajaz Mohammad Shafi Khan .. Applicant

Versus

The Union of India & Anr. .. Respondents

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Mr.Satish Maneshinde with Ms.Anandini Fernandes i/b
Mr.Deepak Thakkar for the Applicant.

Mr.Shreeram Shirsat with Mr.Amandeep Singh Sra,
Mr.Shekhar Mane and Ms.Nishi Singhvi for Respondent No.1/
UOI.

Ms.A.A.Takalkar, A.P.P. for the State/Respondent.

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**CORAM: BHARATI DANGRE, J.
DATED : 30th AUGUST, 2022**

P.C:-

1. Heard learned counsel Mr.Maneshinde for the applicant,
learned counsel Mr.Shirsat for the Union of India and learned
A.P.P. Ms.Takalkar, for the State.

2. The applicant, who is arraigned as an accused in NDPS
Special Case arising out of F.No.NCB/MZU/CR-24/2021, seek
his release on bail on the ground of his false implication and

also on the ground that there is no material compiled against him in the charge-sheet, which would accuse him of offence of alleged financing for illicit trade in drug. The relief is also sought on the ground that the applicant came to be arrested on 30/03/2021 and, since now the investigation is complete and the charge-sheet is filed before the Special Judge, his further incarceration is unnecessary.

3. With the assistance of the respective counsel, I have perused the material compiled in the charge-sheet.

4. Learned counsel Mr.Maneshinde would submit that the applicant has been roped in the present C.R. in a mala fide manner and the case against him, built by the prosecution, is based on conjectures, speculations and sweeping assumptions. He would submit that 31 tablets of Alprazolam, having total weight of 4.5 grams, are alleged to have been seized. Even accepting the case of the prosecution as it is, this quantity would fall within the ambit of Section 22(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (**for short, “the Act”**) and on conviction, at the most, the applicant is liable for maximum imprisonment upto one year or can be levied with fine or with both. Apart from this, learned counsel would submit that the statements of accused Nos.2 and 4, recorded under Section 67 of the Act, are of no consequence in the light of the latest decision of the Hon’ble Apex Court in the case of ***Tofan Singh Vs. State of Tamil Nadu***¹, which at the end, would not be admissible during his trial and cannot lay the basis for

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his incarceration. As far as the statements of the witnesses, recorded under Section 164 of Cr.P.C. is concerned, learned counsel would submit that they are extremely vague and contain bald allegations, which are inherently improbable and these statements find no corroboration in the complaint. Apart from this, the submission is, the investigation is neither fair nor impartial.

Learned counsel has submitted that the applicant arrived in Mumbai at 1.35 p.m. on the date on which he is alleged to have been detained, but the media repeatedly displayed that he was detained from Mumbai Airport in connection with the drug case and the submission is, he being a well-known celebrity, it was widely publicised that in the evening of 30/03/2021, he was detained by NCB at Mumbai Airport, while he was returning from Rajasthan. Learned counsel supported his submission by the air-ticket in his possession.

In utter contrast, my attention is invited to the panchnama dated 30/03/2021 where it is shown that the process has begun at 2.55 p.m. and ended at 16.40 hrs., which create loophole in the prosecution version.

5. Per contra, learned counsel Mr.Shirsat, vehemently opposed the application and he would rely upon the complaint filed by the NCB and fall back on the affidavit filed by the authorised officer, opposing the application.

Mr.Shirsat would submit that on the basis of the specific information received, the house of accused No.1 was raided

and 1.973 Kg.Mephedrone was recovered. Thereafter, raid was conducted in the house of accused No.2, where contraband of 61.0 grams in form of Mephedrone and 160.0 gram Ephedrine came to be seized. His submission is, upon the information supplied by the two accused persons, raid was conducted in the flat of the applicant where Alprazolam, in the quantity of 4.5 gram, was seized and after recording his statement under Section 67 of the Act, since the applicant was found to be involved in the commission of offence, he came to be arrested.

6. Mr.Shirsat would vehemently submit that, according to the prosecution, it is not only the quantity of Alprazolam, which would make him liable, but the complaint accuse him of his involvement in the chain of procurement, distribution, transport of the drug seized in commercial quantity and a serious apprehension is expressed that in case, the applicant is released on bail, he will tamper with the evidence and influence the witnesses and once again may involve himself in trafficking of drug.

Referring to Section 37 of the Act, learned counsel would submit that there are reasonable grounds for believing that the applicant is not guilty of the offence nor it can be believed that he will not commit any offence, while being released on bail.

7. In order to ascertain, whether the applicant is able to fit his case within the scope of parameters prescribed under

Section 37 of the Act, it would be necessary to refer to the case of the prosecution.

8. In the complaint presented before the Special Judge by the Intelligence Officer, NCB, Mumbai Zonal Unit, Mumbai, the applicant is arraigned as accused No.3 and is shown to be arrested on 30/03/2021. The complaint filed by the Intelligence Officer, NCB reveals that specific information was received on 25/03/2021, which was reduced in writing and put up before the Superintendent, NCB, Mumbai and he instructed the Intelligence Officer to constitute a team and initiate necessary action. The information was to the effect that accused No.1 is involved in drug activities and, therefore, it was necessary to carry out search of his residential premises. Pursuant to the said information, the NCB team reached the house of accused No.1 and in presence of the panchas and accused No.1, a search was carried out. The procedural formalities were adhered to and the Gazetted Officer was called for the search.

The search led to three ziplocked polybag with light brown coloured substance, which was tested to be Mephedrone. On weighing, it was found to be 1.973 Kg. On following the necessary procedure, the samples were drawn and the contraband was seized. Apart from this, Indian and foreign currencies were also seized. He was issued notice under Section 67 of the Act for recording his statement.

9. The information received from him led to accused No.2, who was reported to be dealing in drug and his house search was carried out in his presence, which led to seizure of Mephedrone and found to be 61.0 gram in weight. Apart from this, Ephedrine of 160.0 gram was also seized.

Thereafter, the NCB team reached at Flat No.1201, "A" Wing, Yari Road, Versova, Andheri and one person opened the door, who identified himself as Ajaz Khan (applicant), the owner of the flat. He gave permission to enter the room and the house came to be searched. In the bed-room, tablets of Alprazolam, in form of strip were found, which were weighing 4.5 gram. In his statement under Section 67, the applicant disclosed that he was acquainted with accused No.2 and from whom, he demanded 5 gram of Mephedrone and accused No.2 asked for payment of Rs.8,000/- for the said contraband. The applicant led to accused No.4-Gaurav Dixit and he was shown to be arrested on 26/08/2021 at 19.00 hrs.. From Gaurav Dixit, 8 gram of Mephedrone, 20 gram of Charas and nine tablets weighing 0.6 gram in form of Ecstasy Tablets were seized under panchnama dated 03/04/2021.

10. As rightly submitted by learned counsel Mr.Shirsat, the applicant is not accused of only being found in possession of Alprazolam tablets, which came to be recovered through the seizure panchnama, recorded on 30/03/2021, but his involvement surfaces on the basis of certain other material also. His voluntary statement recorded under Section 67 refers to the search and seizure and he makes a specific reference to accused No.1-Shahrukh from whom he procured

Weed/Charas for personal smoking. He also reveals about his contact with Gaurav Dixit, who was also a supplier of Weed/Charas to him.

The voluntary statement of Gaurav Dixit, recorded under Section 67 of the Act, is also compiled in the charge-sheet, who categorically reveals that, it is the applicant, who was keeping the substance in his place by threatening him and his girlfriend. He has also disclosed that before the NCB raided his house, the applicant has called him from his servant's phone and told him to flee away, as he was apprehensive that if he is interrogated by them, he would disclose his role in the entire episode.

11. The applicant, during investigation, had produced the prescription from Dr.Chirag Shah in the name of his wife Ms.Ayesha Khan, but Dr.Chirag Shah, whose statement was recorded, categorically state that he had never treated Ms.Ayesha Khan and she is not his patient nor he has given any prescription. When confronted with the prescription, he denied that it was issued by him. Statement of Dr.Chirag Shah is also recorded under Section 164 of the Cr.P.C., where he reiterated that he had not given any prescription in favour of Ms.Ayesha Khan, as she was not his patient.

Statement of one independent witness, Zoheb Bhayani is also recorded under Section 164 of Cr.P.C. and it is stated by him that since 2019, he was knowing the applicant, who met him outside the Kokilaben Hospital, Andheri and he was collecting donation for cancer patient. Their talks led to the

procurement of Charas and Zoheb was asked by the applicant to visit a particular place to procure Charas, since as a celebrity, he is unable to reach there. As such, he paid a sum of Rs.5,000/- and asked him to meet one person, who delivered him the desired substance. The applicant is alleged to have continued with the said method and pressurized him for bringing Hash.

The role of the applicant in drug trafficking is disclosed by this witness by stating that, he used to indulge young persons and he was selling pills and he was exploiting young boys and girls, by supplying them drug.

12. Another witness, Shahrukh Ghanchi, who had met the applicant in the year 2019, gave a similar narration, where he has stated that he offered him money and asked him to procure Charas. The methodology was repeated on 2-3 occasions, when at the instance of the applicant, it is alleged that the drugs were procured by him for some amount.

13. It can thus be seen that though there is recovery of small quantity of contraband from the applicant, he is connected to recovery of commercial quantity from the co-accused and, therefore, the case sought to be projected by the learned counsel Mr.Maneshinde, cannot be accepted. Considering the drug to be a menace and considering that in the past also, the applicant was arrested in connection with a C.R. which invoked Section 8(c) read with Section 22(b) of the Act, though has been released on bail, since the quantity was found

to be non-commercial quantity, there are reasonable grounds to believe that the applicant would again indulge in similar activity, since while on bail in the previous C.R., he has committed the present offence.

14. The habitual engagement of the applicant in dealing/peddling with the contraband has come on record and from accused No.2, commercial quantity came to be seized and considering the nexus of the applicant with accused No.2, his involvement cannot ruled out. His involvement in the alleged conspiracy with the other accused in illicit drug trafficking is, *prima facie*, established from the material compiled in the charge-sheet and, since, I am not satisfied that there exists reasonable grounds to believe that he is not guilty of the offence punishable under the Act, I do not deem it fit to restore his liberty. It is not necessary or desirable for me to weigh the evidence meticulously to arrive at a positive finding, whether or not the applicant has committed the offence under the Act, but it would suffice my purpose, on having an over all view of the material complied in the charge-sheet, to say that it give rise to a reasonable ground for not believing that the applicant is not guilty of the charge levelled against him. Merely because, there is no seizure of commercial quantity of contraband from the applicant, will not absolve him of the accusations, particularly, when the charge-sheet record recovery of commercial quantity of drug from the co-accused, with whom the applicant was closely associated and shared monetary transaction. The charge-sheet, *prima facie*, indicate the involvement of the applicant in the crime and it establish



that there were financial dealings, resulting into illicit trafficking and purchase of drug. The rigors applicable under Section 37 of the Act are well attracted in the present case. The length of period of custody or the fact that the charge-sheet has been filed, but the trial has not commenced itself cannot be a ground for releasing the applicant on bail, when he failed to cross the rigors of Section 37. Hence, the application deserves a rejection and, is accordingly rejected.

(SMT. BHARATI DANGRE, J.)