

Order below Appln. (BA) Exh.25 ..1.. in Spl. Case No.378/2024

MHCC020031482024



Presented on : 03-09-2024

Registered on : 03-09-2024

Decided on : 07-11-2024

Duration : 02 M, 04 Days

**IN THE SPECIAL COURT FOR NARCOTIC DRUG AND PSYCHOTROPIC
SUBSTANCES ACT, 1985, AT GR. BOMBAY**

ORDER BELOW APPLICATION (BA) EXHIBIT-25

IN

SPECIAL CASE NO.378 OF 2024

Harish Urvadatta Pant)
Aged : 28 years, Occ: Business)
R/at : 653 Chamkhala, Saimanoor,)
Almoda, State Uttarakhand.) .. Applicant/accused
No.18

V/s.

The State of Maharashtra)
(At the instance of Sakinaka police)
station, Mumbai, vide Spl. LAC/C.R.)
No.787/2023).) .. Respondent/Prosecutor

Appearance :

Ld. Adv. Ms. Darekar, for the applicant/accused.

Ld. APP Mr. B.G. Rajput, for the respondent/prosecution.

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CORAM : SHRI. MAHESH K. JADHAV
ADDL. SESSIONS JUDGE (C.R.43)

DATE : 07/11/2024

ORAL ORDER

This is an application taken out by applicant/accused No.18 **Harish Urvadatta Pant** under section 483 of the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023 for enlarging him on bail in Spl. LAC/C.R. No.787/2023 (now Special Case No.378/2024) registered at Sakinaka police station, Mumbai for the offences punishable under section 8(c) r/w section 22(c), section 27A and section 29 of Narcotic Drug and Psychotropic Substances Act, 1985 (hereinafter referred as "NDPS Act"), section 3 and section 25 of the Arms Act and section 37(1) A, 135 of Maharashtra Police Act.

2. Perused the application, documents filed therewith, say of the learned APP and record of Special Case No.378/2024. Heard, arguments advanced by learned Advocate for applicant/accused and learned APP.

3. Ld. Advocate for the applicant/accused No.18 argued that, this is the first bail application taken out by the applicant/accused after filing of the charge-sheet and no application for grant of bail is pending in High Court or earlier rejected by any Higher Court.

The prosecution case in brief is as under:

4. Ld. Advocate for the applicant/accused submitted that, on 07/08/2023 police from Sakinaka Police station, was on patrolling duty.

They apprehended Anwar Afsar Sayyed (accused No.1) on suspicion. 10 gram Mephedrone (MD) was found in conscious possession of Anwar Sayyed. After inquiry about the source of contraband he disclosed the name of Javed Ali Khan (accused No.2) and Mohammad Asif Nasir Shaikh (accused No.3). On the same day Javed Khan and Mohammad Asif Shaikh was apprehended. 60 gram Mephedrone (MD) was recovered from the possession of Javed Khan. 10 gram Mephedrone (MD) and cash of Rs.3,00,000/- was recovered from the conscious possession of Asif Nasir Shaikh. On inquiry about the source of contraband Asif initially discloses name of Hasan Suleman Shaikh (accused No.6), Ajmal and Asif Nasir Shaikh @ Chinna (accused No.8). Thereafter Asif again on inquiry disclose that Iqbal Mohammad Ali Shaikh (accused No.4) took the contraband from him to sale it. Iqbal was apprehended. 20 gram Mephedrone (MD) was recovered from the conscious possession of the Iqbal.

5. On inquiry about the source of contraband Iqbal disclosed the name of Hasan Suleman Shaikh (accused No.6), Ayub Abudul Sattar (accused No.7), Sundar Shaktiwel (accused No.5) and Asif Chinna (accused No.8). Sundar Shaktiwel was apprehended. 10 gram Mephedrone (MD), two mobiles of Nokia Company and cash of Rs.40,000/- was recovered from the conscious possession of Sundar Shaktiwel (accused No.5).

6. On 12.08.2023 police took house search of Asif. 60 gram Mephedrone (MD), weight Machine, seized. On 18.08.2023 Arif Shaikh (accused No.8) was apprehended on 18/08/2023 Samsung Company mobile was seized from him. As per his memorandum dated 21.08.2023 Pistol, 50 gram Mephedrone (MD) and cash of Rs.

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4,00,000/- was recovered. On inquiry about the source of contraband Asif disclosed the name of Nasir Umar Shaikh @ Chacha (accused No.9). Nasir was apprehended. 1 Kg 250 gram Mephedrone (MD) was recovered from conscious possession of Nasir. On inquiry about the source of contraband Nasir disclosed the name of Sajid Shaikh. On house search of Sajid, weight machine note book, bag was recovered.

7. During further inquiry with Asif Nasir Shaikh about the source of contraband, he disclosed the name of Rehan Alam Sultan Ahmed Ansari (accused No.11), Munnabhai and Amir Atik Shaikh (accused No.17).

8. When police apprehended Rehan Alam Sultan Ajar Ansari (accused No.11) alongwith Ajhar Asmat Ansari (accused No.10) 15 Kg 560 gram Mephedrone (MD) was recovered from the conscious possession from Ajhar and Rehan Alam.

9. During inquiry about the source of contraband with Rehan Alam (accused No.11), disclosed that he has procured the substance Mephedrone (MD) from the factory run by Bhushan Patil @ Doctor (accused No.20), Abhi Balkwade @ Jagga @ German (accused No.19) and from Shaikh Jishan Iqbal (accused No.12). The Shaikh Jishan was apprehended. As per Memorandum panchanama Shaikh Jihan shown the factory wherein Mephedrone (MD) was manufactured. Again, he disclosed the name of Bhushan Patil, Abhi Balkawade runs a factory and also in second discloser he mentioned the name of Rohit Charudhari (accused No.13) who supplied the Mephedrone (MD).

10. Police get knowledge that, Rohit Kumar Chaudhary (accused No.13) used to supply formula and prepared Mephedrone (MD). On 11/10/2023 Rohit was apprehended as per his Memorandum panchanama the Mephedrone (MD) of 12 Kg 577 gram which was buried under the ground as per the say of Bhushan Patil was seized.

11. Police effected raid from the factory situated at Plot No.35, Gat No.467 1, to 3/2/4 of Shri Balaji Industry Al Thakkar Industrial area Nashik. Police saw that Uma Shankar Yadav was present in the factory. Police in presence of Uma Shankar, took the search of the factory. All the material for preparation of Mephedrone (MD) was found inside the factory. The drums, boiler, buckets, Mug, Machine for preparation of Ice, handglove, etc., admeasuring cost of Rs.268 Crore 75 Lakhs 20 thousand were seized from the factory alongwith Mephedrone (MD).

12. Thereafter, police get knowledge that factory was run by Lalit Anil Patil (accused No.15), his brother Bhushan Anil Patil (accused No.20) and Abhishek Balkavade (accused No.19).

13. Further during investigation, it was revealed that Shivaji Shinde (accused No.14) used to supply the raw material to the factory for preparation of Mephedrone (MD). He was arrested on 12.10.2023. The Lalit Patil was taken into custody for inquiry at Bangalore Karnataka. He was brought at Sakinaka police station and after admitting guilt, he was arrested. One Sachin Wagh (accused No.16) was used to provide help to Lalit Patil from escaping, he has provided vehicle. Sachin Wagh was apprehended. Sachin Wagh in his Memorandum Panchanama dated 24/10/2023 shown the place wherein

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he as per the direction of Lalit Patil concealed the Mephedrone (MD). The said Muddemal 12 Kg 577 gram Mephedrone (MD) was seized. In spite on search of other Mephedrone (MD) thrown in river, it was not traced out.

14. During the investigation, it is revealed that, Harish Panth (accused No.18) has knowledge about the manufacturing Mephedrone (MD) and he provide the formula of Mephedrone (MD) to the factory of Bhushan & Lalit. He was apprehended. As per his memorandum panchanama 55 gram Mephedrone (MD) and cash of Rs.1,50,000/- was recovered from his possession.

15. Bhushan Patil (accused No.20) and Abhishek Balkawade (accused No.19) were in custody of Badgarden Police Station, Pune. As per transfer warrant they were apprehended.

16. It is submitted by the Ld. Advocate for the applicant/accused that, applicant/accused was apprehended Uttarakhand on 24/10/2023 and shown to be arrested on 26/10/2023. The Investigating Officer committed breach of article 21 and article 22 of Indian Constitution as well as under section 57 of the Code of Criminal Procedure, 1973. Investigating Officer has not obtained the transit warrant. The ground of arrest of the applicant/accused is not mentioned nor informed to the applicant/accused. The arrest memo shows the blank space in concern with the ground of arrest column. It is further submitted that, the mandatory condition under section 42(1) of the NDPS Act is not followed. It was required for the officers who received the information to reduce it into writing and send a copy of his immediate superior. In the instant case in spite of got information about

the applicant/accused, Investigating Officer has not forwarded the copy to his immediate superior. It is further submitted that, there is violation of section 42(1) and section 42(2) of the NDPS Act. The search on 04/11/2023 was conducted after sunset before sunrise. But it was conducted without obtaining any warrant of authorization nor the ground for believe were sent to the immediate superior.

17. It is further submitted that, though, it is alleged that, 55 gram Mephedrone (MD) was allege to be seized from the Flat No.704, E-Wing, Global Prestige Tower, Madhuban Township. But the keys of the said premises is with friend of the applicant/accused that is statement is not recorded. Applicant/accused is not having any concern with the said premises. The alleged recovery shows the seal dated 06/11/2023 but the memorandum panchnama is of dated 04/11/2023.

18. It is further submitted on behalf of the applicant/accused that, there is no evidence on record which shows nexus of applicant/accused with the co-accused. He is not having involved in any crime. There was no evidence against the applicant/accused to show the criminal conspiracy. The mobile extraction panchnama did not reflect in the statement of co-accused No.10 Rehan. The formula for manufacturing the Mephedrone (MD) is available on the social media. The false allegation was made against the applicant/accused that, he provide the formula and manufactured the Mephedrone (MD).

19. It is further submitted that, the sample which was drawn was not sent for the inventory within reasonable time. There is tampering in the sample. No inventory prepared in the form number 4. As per form number 5 application to Magistrate is not provided. Rule

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for inventory is not properly followed. All these circumstances itself shows that, the applicant/accused is not guilty of the offences leveled against him. He is falsly implicated in the crime. He is not having any concern with the co-accused. He is the innocent person of 28 years who falsely graph in the false case. He is permanent resident of Uttarakhand. Applicant/accused is ready to abide by all terms and conditions which the court may impose. Therefore, Ld. Advocate for the applicant/accused prayed that, applicant/accused be released on bail.

Ld. Advocate for the applicant/accused kept his reliance on the following citations :

- No.1** *Suaibo Ibow Casamma Vs. Union of India., in Criminal Bail Application No.1005/1993, dated 27.07.1993 of Hon'ble Bombay High Court.*
- No.2** *Ugochukwu Solomon Ubabuko Vs UOI, (NCB), The intelligence Officer, Narcotic Control Bureau and Ors., in Criminal Misc. Application Bail No.585/2021, dated 21.10.2021 of Hon'ble Bombay High Court at Goa.*
- No.3** *Hem Prabhakar Shah Vs. The State of Maharashtra, in Criminal Bail Application No.17757/2024, dated 05/09/2024 of Hon'ble Bombay High Court.*
- No.4** *Manoj Vs. State of M.P., in Criminal Appeal No.371/1999, dated 05/04/1999 of Hon'ble Apex Court. 1(999) 3 Supreme Court Cases 715.*
- No.5** *D.K. Basu Vs. State of West Bengal (1997) 1 SCC 416 – (1997) 1 Supreme Court Cases 416.*
- No.6** *Vishal Manohar Mandrekar Vs. The State of Telangana, in Criminal Revision Case No.228/2024, dated 29/02/2024 of Hon'ble Telangana at*

Hyderabad High Court.

- No.7** *Prabir Purkayastha Vs. State (NCT of Delhi) in Criminal Appeal No. 2024 (Arising out of SLP (Cri.) No(s). -- of 2024 (D. No.428962023), dated 15/05/2024 of Hon'ble Apex Court.*
- No.8** *Mahesh Pandurang Naik Vs. The State of Maharashtra and Anr., in Writ Petition (ST) No.13835/2024, dated 18/07/2024 of Hon'ble Bombay High Cour.*
- No.9** *Pankaj Bansal Vs. Union of India & Ors., in Criminal Appeal Nos.3053-3054/2023, dated 03/10/2023 of Hon'ble Apex Court.*
- No.10** *Priya Indoria Vs. State of Karnataka and Ors., ETC., in Criminal Appeal No. -- 2024 (Arising out of SLP (Cri.) No(s). 11423-11426 of 2023 (Arising out of Diary No.7943/2023), dated 20/11/2023 of Hon'ble Apex Court.*
- No.11** *Boota Singh & Others Vs. State of Haryana, in Criminal Appeal No.421/2021, dated 16.04.2021 of Hon'ble Apex Court.*
- No.12** *Daulatram Vs. State of Maharashtra, in Criminal Appeal No.588/2008, dated 16.04.2019 of Hon'ble Bombay High Court.*
- No.13** *Folarin Abdullaseez Andoyin Vs. The State of Maharashtra, in Bail Application No.185/2021, dated 29.11.2021 of Hon'ble Bombay High Court.*
- No.14** *Karnail Singh Vs. State of Haryana, in Criminal Appeal No.36/2003 with Criminal Appeal No.606/2004, dated 29/07/2009 of Hon'ble Apex Court.*
- No.15** *Lamin Bojang Vs. State of Maharashtra, in Criminal Appeal No.419/1993, dated 18/07/1996 of Hon'ble*

Bombay High Court.

- No.16** *Pankaj Vs. State of Punjab, in CRM-M-25498/2021 dated 14.06.2022 of the Hon'ble Punjab and Haryana High Court.*
- No.17** *Sarija Banu(A) Janarthani @ Janani And Anr., Vs. State Through Inspector of Police in (2004) 12 SCC 266 of Hon'ble Supreme Court.*
- No.18** *State of Maharashtra Vs. Rita Ankush Indrekar, in Criminal Appeal No.903/2006, dated 05/03/2021 of Hon'ble Bombay High Court.*
- No.19** *Syed Yusuf Syed Noor Vs. State of Maharashtra, in Criminal Appeal No.340/1996, dated 25/10/1999 of Hon'ble Bombay High Court.*
- No.20** *Ashok Manik Mhetre Vs. The State of Maharashtra, in Bail Application No.4261/2021, dated 15/07/2024 of Hon'ble Bombay High Court.*
- No.21** *Asif Ali Vs. State of NCT of Delhi, in Bail Application No.647/2022, dated 03/02/2023 of Hon'ble Delhi High Court at New Delhi.*
- No.22** *Jagsir Vs. State of Haryana, in Criminal Misc. No.40508-M/2001, dated 13/12/2001 of Hon'ble Punjab and Haryana High Court.*
- No.23** *Khalek Miah Vs. State of Tripura, in Bail Application No.18/2016, dated 19/02/2016 of Hon'ble Tripura at Agartala High Court.*
- No.24** *Nagesh Sharma Vs. State of NCT of Delhi, in Bail Application No.3185/2022, dated 28/03/2023 of Hon'ble Delhi High Court at New Delhi.*
- No.25** *Notification issued by Ministry of Finance (Department of Revenue) Notification New Delhi dated 23/12/2022.*

- No.26** *Kelsi Katte Mahammed Shakir Vs. The Superintendent of Customs, AIU Unit, Mumbai, in Criminal Petition No.5402/2018, of Hon'ble Karnataka at Bengaluru High Court.*
- No.27** *Chandru Kunthur Raghuvegowda Vs. State, in Crl. P. No.303/2017, dated 28/04/2017 of Hon'ble Karnataka High Court.*
- No.28** *Inspector of Customs Vs. Ms Daphira Wallant, in CRLP. No.2411/2009, dated 03/08/2009 of Hon'ble Karnataka High Court.*
- No.29** *Abdullah Abdul Salam Shaikh Vs. The State of Maharashtra, in Bail Application No4491/2021, dated 02/03/2023 of Hon'ble Bombay High Court.*
- No.30** *Ali Mohammed Shafi Alam Shaikh Vs. The State of Maharashtra, in Bail Application No.1300/2023, dated 02/02/2024 of Hon'ble Bombay High Court.*
- No.31** *Alpesh Kumar Suresh Kumar Jain Vs. The State of Maharashtra, in Bail Application No.1485/2023, dated 31.01.2024 of Hon'ble Bombay High Court.*
- No.32** *Chukwuebuka Uwzo Egwo Vs. The State of Maharashtra, in Bail Application No.4004/2023, dated 01.04.2024 of Hon'ble Bombay High Court.*
- No.33** *Salim Akbar Khan Vs. The State of Maharashtra, in Bail Application No.3337/2023, dated 03.04.2024 of Hon'ble Bombay High Court.*
- No.34** *Farooq Mohd. Naim Chaudhary Vs. Union of India & Anr., in Criminal Bail Application No.350/2022, dated 07.05.2024 of Hon'ble Bombay High Court.*
- No.35** *Jabir Nader Ali Vs. The State of Maharashtra, in Criminal Bail Application No.303/2023, dated 04.12.2023 of Hon'ble Bombay High Court.*

No.36 Shabbir Usman Shaikh Vs. The Union of India & Anr., in Bail Application No.731/2024, dated 13/08/2024 of Hon'ble Bombay High Court.

This court have gone through the observations made therein.

20. On the other hand, Ld. APP Shri. B.G. Rajput vehemently submitted that, there is chain of drug paddler. The chain of accused was started from the apprehension of accused No.1 on 07/08/2023 which is linked upto the manufacturer factory at Nashik. The record reflects that, all the mandatory compliance under the NDPS Act was complied by the investigating officer. The applicant/accused is deeply involved in the present case. The conspiracy of the applicant/accused with the co-accused are seen from the record. The cumulative quantity of the substance found in the instant case is commercial quantity. The rigors of section 37 of the NDPS Act comes into play. Applicant/accused is one of the parts of the chain of drug trafficking. The record reflects that since long applicant/accused is involved in the drug trafficking business. All the compliance under section 52-A of the NDPS Act is completed. The Muddemal seized in the case was kept in the safe custody of storeroom. The station diary entries and Muddemal register of the storeroom itself reflect that all the precautions were taken by the investigation officer to kept the seized Muddemal in safe custody. The inventory was drawn within reasonable time. What was the reasonable time is necessary to be determine at the stage of final adjudication of the case. When the substance came in to the contact of air the colour was changed. Merely because the colour of substance is seems to be changed is not a ground to release the applicant/accused on bail. Applicant/accused alongwith

co-accused are engaged in the business of drug trafficking. There is possibility of destroying of the Muddemal, therefore it was not required for the investigating officer to take search warrant or authorization certificate. Thus, there is compliance under section 42 of the NDPS Act. The inventory panchanama drawn by the Magistrate shows that he verified all the Muddemal its weight and snapped the photographs and took the sample. The statement of carrier reflects that after drawing sample from the Magistrate, he has carried the sample and forwarded it to the CA. The analysis report shows the substance is of Mephedrone (MD). Other defect shown by the applicant/accused will be consider at the stage of trial and not at this interim stage. Applicant/accused failed to create serious doubt about the prosecution case. The rigors of section 37 of the NDPS Act comes in to play. If the applicant/accused released on bail there are every chances of repetition of crime as well as tampering and hampering to the prosecution witnesses at the hands of the applicant/accused. Applicant will abscond if he was released on the bail. There is no reasonable ground of believing that applicant/accused is not guilty of the offence on that he is not likely to commence any offence while on bail. Applicant/accused was taken into custody from the Uttarakhand from 25/10/2023 for only inquiry purpose. The inquiry which was conducted in the Mumbai reveals the involvement of the applicant/accused due to which by following guidelines of Hon'ble Supreme Court he was arrested. His relatives was informed about the applicant/accused. Applicant/accused has not made any complaint before Magistrate on first remand. The huge investigation was done which was start from the seller and customers till the manufacturer. Therefore, merely because some columns are not fill up is no ground to release applicant/accused on bail. Hence, with these and other grounds Ld. APP submitted to reject the application.

Ld. APP kept his reliance on the following citation :

***No.1 Karn @ Karan Kumar Das s/o Samod Das
Vs. State of Maharashtra, in Criminal
Application (BA) No.1135/2023, dated
14/02/2024 of Hon'ble Bombay High
Court at Nagpur Bench.***

This Court have gone through the observations made therein

21. From the matter on record it appears that, applicant/accused is alleged to have committed offence punishable under section 8(c) r/w section 22(c), section 27A and section 29 of NDPS Act, section 3 and section 25 of the Arms Act and section 37(1) A, 135 of Maharashtra Police Act. Punishment provided for the offence may extend upto 20 years imprisonment and also fine which may extend upto One Lakh rupees. Thus, the offence alleged to have been committed is of grievous nature and severe punishment is provided for same. Considering fact that commercial quantity of contraband recovered from the possession of the applicant/accused and co-accused and nature of offences rigors of section 37 of NDPS Act are applicable to present matter.

22. On scrutinizing the charge-sheet and record it appears that, co-accused were arrested and thereafter, name of the present applicant/accused was revealed. 57 gram Mephedrone (MD) is alleged to be recovered along with connection of the manufacturer factory and supplying of the formula is revealed during the investigation which shows the connection of the present applicant/accused with the co-accused. The contraband which is recovered from the possession of the

applicant/accused is of commercial quantity. Rigours of section 37 of the NDPS Act comes into play.

23. The first submission made by the present applicant/accused is in concern with his arrest. Much grievance is made about his arrest dated 26/10/2023. As per the submission of applicant/accused there was a illegal detection and breach of article 21 and article 22 of Indian Constitution as well as section 57 of the Cr.PC. Applicant/accused relied on the ratio laid down in the case of *Suaibo Ibow Casamma Vs. Union of India.*, *Ugochukwu Solomon Ubabuko Vs UOI, (NCB), The intelligence Officer, Narcotic Control Bureau and Ors.*, *Hem Prabhakar Shah Vs. The State of Maharashtra*, *Manoj Vs. State of M.P.*, *D.K. Basu Vs. State of West Bengal*, *Vishal Manohar Mandrekar Vs. The State of Telangana*, *Prabir Purkayastha Vs. State (NCT of Delhi)*, *Mahesh Pandurang Naik Vs. The State of Maharashtra and Anr.*, and *Pankaj Bansal Vs. Union of India & Ors.*, cited supra.

24. In concern with grievance made by the applicant/accused about his arrest. Firstly record reflect that, he was apprehended at Dehradun for inquiry. The record reflect that, when he was brought in Mumbai on 25/10/2023 after his inquiry when his involvement was seen on the record at that time he was arrested on 26/10/2023 in Mumbai and within 24 hours he was produced before the Magistrate. The word inquiry is differs from the word investigation. Therefore, there is no requirement of transit warrant and there is no breach of Article 21 and Article 22 of Indian Constitution. As earlier discussed if really there was any breach and there was any illegal detention certainly applicant/accused who was represented through Advocate before the Magistrate would have put grievance about it at the earlier

stage. To the contrary, as earlier discussed the word 'investigation' and 'inquiry' is totally different. The right of the accused and liberty was curtail when he was arrested in Mumbai on 25/10/2023 and not on 24/10/2024. Therefore, ratio on which applicant/accused is relied upon are not applicable to the facts and circumstances of the present case. Furthermore, merely the arrest form kept a blank space is having no ground to release applicant/accused on bail. To the contrary it appears that, the arrest form discloses that, all the mandatory compliance of the directions issued by the Hon'ble Supreme Court is followed by the Investigating Officer. Therefore, on this ground applicant/accused is not entitled to get release on bail.

25. The record reflects that, on 23/09/2023 initially police received information about the co-accused and accordingly it was reduced into writing and forwarded to the immediate superior. Here, in concern with the role of the present applicant/accused it appears that, his role is disclosed after arrest of co-accused Amir Shaikh. The memorandum statement of Amir Shaikh which led to discover reflects that, applicant/accused is deeply involved in manufacturing in the Mephedrone (MD). He has supplied the formula. He has participated the manufacturing the Mephedrone (MD) with co-accused Lalit Patil and Bhushan Patil. Thus, this intimation of about the involvement of the applicant/accused in the crime is a memorandum panchnama of co-accused and it cannot be said to be an information. The record reflects that, the premises at Flat No.704, E-Wing, Global Prestige Tower, Madhuban Township is belongs to the applicant/accused and was controlled in the present applicant/accused. The keys of the said flat was brought from the friend of the applicant/accused. What was the effect of not recording statement of the friend of the applicant/accused

is a question required to be determined at the stage of trial and not at this interim stage of bail. But the record reflects that, the said premises belongs to the applicant/accused and 55 gram Mephedrone (MD) of commercial quantity was recovered from the possession of the applicant/accused. Merely because there was some change in the dates in the seal and the panchnama does not abolish all the record which shows deep involvement of the applicant/accused in the preparation and manufacturing in the Mephedrone (MD).

26. The record reflects that, the confession of the co-accused and applicant/accused which lead to the discovery of the facts and recovery of contraband from the premises of the applicant/accused shows deeply involvement of the applicant/accused in the crime.

27. It appears from the record that, applicant/accused supplied the formula of Mephedrone (MD) to Siraj Mandal and Dishan Khan, he himself manufactured the Mephedrone (MD). He has involved in the conspiracy with the Lalit Patil and Bhushan Patil to prepare the contraband. As earlier discussed after the arrest the information of his arrest was given to his sister Meena Joshi by the Investigating Officer. In concern defect shown in respect of the certificate of the Magistrate at the time of inventory is required to be considered at the stage of trial and not at this interim stage of bail. This defect can be proved after giving opportunity to the prosecution to produce evidence into that effect. What was required time for sending the sample is also question required to be determined at the stage of trial. At this prima facie stage it appears that, sample was kept in safe custody in sealed condition. It was sent before the Magistrate for inventory in sealed condition and it was forwarded to the CA office in sealed condition. Prima facie in

concern with the contraband which was seized from the possession of the applicant/accused there appear no tampering. Under such circumstances, the ratio laid down by Hon'ble High Court and Hon'ble Supreme Court on which relied upon cited supra are not applicable to the facts and circumstances of the present case. All the mandatory compliance under the NDPS Act is complied with. The CDR, statement of co-accused, recovery from the present applicant/accused, involvement of the crime all and above mentioned factor shows deeply involvement of the applicant/accused in the crime. Applicant/accused failed to show that, he is not guilty of the offences leveled against him. If the applicant/accused released on bail there are every chances of repetition of crime as well as tampering and hampering to the prosecution witnesses at the hands of the applicant/accused. As he is having knowledge of formula of preparation of Mephedrone (MD). There is every possibility of repetition of crime.

28. In view of mandate of section 37 of the NDPS Act burden is upon the accused to show that, there are reasonable grounds to believe that, he is not guilty of the offence and to satisfy the Court that applicant/accused is not likely to commit similar offence. Applicant/accused has not demonstrated any material to show that there are reasonable grounds to believe that applicant/accused is not guilty of offence alleged to have been committed by him. From the appreciation of the material on record there are reasonable grounds to believe that, applicant/accused has committed the offence punishable under section 8(c) r/w section 22(c), section 27A and section 29 of NDPS Act, 1985, section 3 and section 25 of the Arms Act and section 37(1) A, 135 of Maharashtra Police Act. Moreover, considering the nature of offence and the matter on record and the fact that, huge

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quantity of contraband was recovered from the applicant/accused and co-accused court is also not satisfied that, the applicant/accused will not commit the similar offence again. As such conditions under section 37 of NDPS Act are not fulfilled and therefore, embargo put by section 37 of NDPS act is not lifted.

29. Prima facie there is no material on record, so as to doubt genuineness of the prosecution case. Prima facie there appear no inherent infirmities or improbability in the prosecution case. Considering the nature of offence the possibility that, after release of the applicant/accused, the applicant/accused may tamper the prosecution evidence or influence the witnesses or may involve in commission of such offences cannot be ruled out.

30. Considering the above facts and discussion and prima facie appreciation of the material on record release of the applicant/accused at this stage is likely to be prejudicial to the interest of the society at large. Liberal approach in grant of bail in such kind of offences under NDPS Act is also uncalled.

31. On prima facie appreciation of the material on record and considering the nature of the offence, gravity of the offence there appear no justifiable grounds for releasing applicant/accused on bail. As such the present application is liable to be rejected. Hence, the following order.

ORDER

1. Application (BA) Exh.25 of applicant/accused No.18 **Harish**

Order below Appln. (BA) Exh.25 ..20.. in Spl. Case No.378/2024

Urvadatta Pant in Spl. LAC/C.R. No.787/2023 in Special Case No.378/2024, is rejected.

2. Application (BA) Exh.25 is disposed of accordingly.

(Pronounced in open Court)

Date : 07/11/2024.



(Mahesh K. Jadhav)
N.D.PS Special Judge
City Civil & Sessions Court,
Gr. Bombay (CR.43)

Dictated on : 07/11/2024
Transcribed on : 07/11/2024
Checked on : 08/11/2024
Signed on : 11/11/2024

Order below Appln. (BA) Exh.25 ..21..

in Spl. Case No.378/2024

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”		
UPLOAD DATE	TIME	NAME OF STENOGRAPHER
12.11.2024	11.11 a.m.	Sanjay Baliram Kaskar (Stenographer Grade-I)
Name of the Judge		H.H.J. Shri. Mahesh K. Jadhav NDPS Spl. Judge (C.R.No.43)
Date of Pronouncement of Judgment/Order.		07.11.2024
Judgment/order signed by P.O on		11.11.2024
Judgment/order uploaded on		12.11.2024