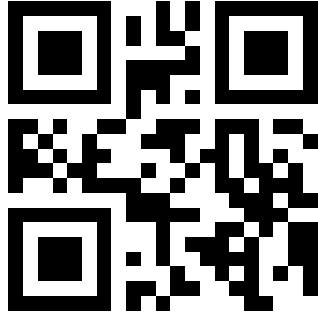


Order below Appln. (BA) Exh.16 ..1.. in Spl. Case No.378/2024
MHCC020031482024



Presented on : 18-06-2024
Registered on : 18-06-2024
Decided on : 24-10-2024
Duration : 04 M, 06 Days

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

ORDER BELOW APPLICATION (BA) EXHIBIT-16

IN

SPECIAL CASE NO.378 OF 2024

Azhar Asmat Ansari)
Aged : - years, Occ:)
R/at : House No.572, Guljar Nagar, Tal)
Bhiwandi, Dist Thane - 421302.) .. Applicant/accused
No.10

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. Zehra Charnia, for the applicant/accused.
Ld. APP Mr. B.G. Rajput, for the respondent/prosecution.

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

DATE : 24/10/2024

ORAL ORDER

This is an application taken out by applicant/accused No.10 **Azhar Asmat Ansari** under section 439 of Code of Criminal Procedure 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.10 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 is falsely roped in the incident. There is total non-compliance of section 50 of the NDPS Act. It is alleged against the present applicant/accused that co-accused No.8 Arif Nasir Shaikh give information about the applicant/accused but nothing on record to show that, any disclosure was made by the co-accused No.8. The said information which was reduced into writing shown the car number 8626 at Bhiwandi in between 13.30 to 16.30 hours. The statement of witnesses PI Shinde and PSI Pardeshi reflect that, PC Khandare was received the information. The seizure panchnama speaks that, applicant/accused was coming in front of Bharat hotel, Mumbra-Panvel road by vehicle number 2826. This is a discrepancies which goes to the root of the matter. There is violation of

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section 42 of the NDPS Act. The investigation is completed. Further custodial interrogation of the applicant/accused is not warranted. Applicant/accused is not having any concern with the co-accused. Statement of co-accused are inadmissible in evidence. The investigation is completed. There was change in the contraband which was seized from the spot and produced before the Magistrate and sent to the CA. There is inordinate delay in sending Muddemal before the Magistrate and before the CA. In addition to above discrepancies there is no material on record to show the conspiracy in between applicant/accused and co-accused on the way of monetary transaction, whatsapp chat, CDR report etc. There are reasonable grounds to believe that the applicant/accused has not committed the offence as alleged against him. The rigors of section 37 of the NDPS Act is not applied. The applicant/accused did not possess criminal antecedents. He is bread earner of his family. 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 *Sushant Sambhaji Rasal Vs. The State of Maharashtra, in Bail Application No.1760/2021, dated 01/02/2023 of Hon'ble Bombay High Court.***
- No.2 *Sanobar Shafiq Khotal Vs. State of Maharashtra, in Bail Application No.3337/2021, dated 14.10.2022 of Hon'ble Bombay High Court.***
- No.3 *Mohammad Irshad Abdul Rahman Vs. The State of Maharashtra, in Criminal Bail Application***

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No.121/2022, dated 03/04/2024 of Hon'ble Bombay High Court.

No.4 Venkatesh Shiva Permal Vs. The State of Maharashtra, in Bail Application No.3784/2023, dated 23/01/2024 of Hon'ble Bombay High Court.

This court have gone through the observations made therein.

17. 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 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. 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

18. 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.

19. On scrutinizing the charge-sheet and record it appears that, on 23/09/2023 police received the information that, present applicant/accused along with co-accused Rehan @ Golu were coming for exchange of Mephedrone (MD) at Shilphata, Kalyan. Accordingly, raid was effected and in all 15.560 Kg Mephedrone (MD) was recovered from the conscious possession of the present applicant/accused and co-accused Rehan. Thus, it appears that, the contraband which recovered from the possession of the applicant/accused is of commercial quantity. Rigours of section 37 of the NDPS Act comes into play. The record reflects that, when the information was received it was reduced into writing and thereafter, the raid was effected. Merely because there is change in vehicle number about the information received to the police cannot ground to release applicant/accused on bail. To the contrary it appears from the record that, right under section 50 of the NDPS Act

was appraised to the present applicant/accused. Applicant/accused declined to take search before the Ld. Magistrate or Gazetted Officer. Thereafter, the search of the present applicant/accused was taken. In the search commercial quantity of the contraband was recovered from the hands of the present applicant/accused.

20. It is submitted that, the alleged seizure from the applicant/accused and co-accused No.11 Rehan Alam Sultan Ahmed Ansari are independent seizure and have no connection with each other. But at this prima facie stage the record reflect the conspiracy of the applicant/accused with the co-accused. As earlier discussed only defect in the car number and place, is not washed out the entire search and seizure procedure followed by the Investigating Officer which was conducted by observing the mandatory compliance under the NDPS Act. The minor contradiction in the panchnama and section 50 of the NDPS Act cannot goes to the root of the matter. There is no violation of mandatory compliance of section 42 and section 50 of the NDPS Act.

21. It is submitted by the applicant/accused that, the panchnama dated 23/01/2023 reflects one blue colour plastic bag was seized from the conscious possession of the applicant/accused. It was opened and one white colour plastic carry bag was found inside wherein white colour transparent crystalline powder was found and it was weighted 7 Kg 780 gram which was given Exh.A. It is further submitted that, when the said Exh.A was produced before the Ld. Magistrate the blue colour plastic bag was found wherein white colour powder was found. The another sample of 200 gram Mephedrone (MD) Exh.B when produced before the Ld. Magistrate it was having weight of

205 gram and the change in nature of contraband and colour goes to the root of the matter.

22. In this concern the record reflects that, after seizure of the contraband from the applicant/accused i.e. Exh.A and Exh.B it was kept in the safe custody. It was produced before the Magistrate for inventory. Mere change in colour of plastic bag is not a ground to hold that, the samples were changed. If any minor excess weight was found to the Ld. Magistrate, did not vitiate entire search and seizure procedure. To the contrary, it appears that, all the mandatory procedure under the NDPS Act was followed. Inventory was prepared. What was the delay caused for the inventory and what was the 'reasonable period' for sending of inventory is a question which is required to be determined at the stage of trial and not at this interim stage.

23. From the foregoing discussion it reveal that, there was no major change in the contraband which was seized and sent for the sample. The additional weight which is minor in nature and colour of the bag is required to be taken into consideration at the stage of trial. At this stage this is not a sole ground to release applicant/accused on the bail when the huge contraband of commercial quantity along with conspiracy with the co-accused were recovered from the applicant/accused. Under this circumstances ratio laid down in the case of *Sushant Sambhaji Rasal Vs. The State of Maharashtra*, *Sanobar Shafiq Khotal Vs. State of Maharashtra*, *Mohammad Irshad Abdul Rahman Vs. The State of Maharashtra* and *Venktesh Shiva Permal Vs. The State of Maharashtra* cited supra cannot come to the help of the present applicant/accused.

24. It is pertinent to note that, the record reflects that, the present applicant/accused is the main brain who supplied the contraband to other co-accused from the manufacturer company who are also the co-accused. Mere typewriting mistake in the vehicle number is no ground to release applicant/accused on the bail. Whatever quantity which was recovered from the possession of applicant/accused is of commercial quantity. He not only found together with the co-accused but the same contraband was recovered from the applicant/accused and co-accused. Applicant/accused is a brain in the supplier of contraband to other co-accused. As earlier discussed as mandatory compliance was done by the Investigating Officer. Involvement of the applicant/accused in serious crime with a conspiracy is seen from the record. The role of the other co-accused are different and the role of the present applicant/accused is a major role from whose possession commercial quantity of the contraband was found.

25. 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.

26. 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.

27. 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.

28. 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.16 of applicant/accused No.10 **Azhar**

Order below Appln. (BA) Exh.16 ..15.. in Spl. Case No.378/2024

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

2. Application (BA) Exh.16 is disposed of accordingly.

(Pronounced in open Court)

Date : 24/10/2024.



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

Dictated on : 24/10/2024
Transcribed on : 24/10/2024
Checked on : 24/10/2024
Signed on : 24/10/2024

Order below Appln. (BA) Exh.16 ..16..

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
25.10.2024	12.37 p.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.		24.10.2024
Judgment/order signed by PO on		24.10.2024
Judgment/order uploaded on		25.10.2024