

IN THE COURT OF THE SPECIAL JUDGE FOR N.D.P.S. CASES
AT GREATER MUMBAI

ANTICIPATORY BAIL APPLICATION NO. 2758 OF 2022

IN

C. R. NO. 1141 OF 2022

Deepa Ram Kalunke

Age : 21 years,
R/at : L-3, Dindoshi BMC Colony
Vasahat, Gen. A. K. Vaidya Marg,
Goregaon (East)
Mumbai – 400 065.

...Applicant

V/s.

The State of Maharashtra
(Dindoshi P. Stn.)

...Respondent

Appearance :-

Mr. Ashwin Achari, Ld. Adv. for applicant.
Mr. Parmar, Ld. APP for respondent/State.

CORAM : HIS HONOUR THE SPECIAL JUDGE
V. V. PATIL (C.R. NO. 44)

DATE : 28th December 2022

ORDER

This is an application filed by the applicant **Deepa Ram Kalunke** for grant of anticipatory bail under Section 438 of Code of Criminal Procedure, 1860.

2. The case of prosecution in brief is as under :

It is contention of the applicant that respondent Dindoshi Police station has registered C.R. No. 1141/2022 for offence punishable under Section 8(c) r/w. 22 of the NDPS Act for alleged recovery of 3.5 grams

of Mephedrone from the applicant in the instant case. The applicant apprehended her arrest in respect of the said offence. As per the case of prosecution, on 20/04/2022 the officers of respondent were on patrolling duty at Santosh Nagar slum area at about 12:40 hours. They saw woman standing suspiciously near a scooty and taking out a packet from her pant pocket and handing it over to one boy. Thereafter, since suspicion arose the officers of respondent of informant intercepted the applicant. However the boy ran away. The applicant also tried to flee from the spot, however she was apprehended. On asking the applicant why she and the boy tried to flee from the spot, she informed that she is carrying MD powder with her. Thereafter, two panch witnesses were called and search of her person was taken which resulted in recovery of 3.5 grms of MD from the right side of the pant pocket of the applicant. The applicant was thereafter arrested by officer of respondent in connection with FIR bearing No. 1141/2022.

3. The applicant has now approached this court for grant of anticipatory bail on the ground that she is innocent and has been falsely framed in the instant FIR. The respondent allegedly recovered 3.5 grams MD from the applicant, which is non commercial quantity as prescribed under NDPS Act, 1985. Therefore, section 37 of NDPS Act will not apply. The search of the applicant has been conducted by Police Sepoy who is an unauthorized officer as per Section 42 of the NDPS Act. Further the search of the applicant has been carried out in presence of male officers which has been held to be non-compliance of Section 50(4) of NDPS Act, 1985, as well as Section 46 of Cr.P.C. by the Hon'ble High Court. Furthermore, when the search of applicant was conducted, notice under Section 50 of the NDPS Act was found in the right side pocket of the applicant. However, the entire FIR does not bear any

mention regarding the fact that applicant was appraised of her right under Section 50 of the NDPS Act, 1985, thereby vitiating the alleged recovery effected from the applicant. It is further contended that applicant was arrested by the officer of respondent on 21/11/2022. However, it is pertinent to note that applicant is currently not in custody and therefore apprehends her arrest. Therefore, applicant prayed that in the event of arrest in respect of FIR No. 1141/2022 lodged in Dindoshi police station, this court be pleased to direct to release of applicant on bail forthwith on such terms and conditions as this court may deem fit in the interest of justice.

4. Respondent resisted application by filing say vide Exh.2. It is submitted that while performing patrolling duty applicant was apprehended with 3.5 grams of MD. Hence, offence came to be registered against her. Since it was evening time, the applicant was allowed to go with direction to attend police station in the morning, however the applicant did not attend police station. Thereafter, she was searched but could not be found. It is further submitted that the applicant though found in possession of non commercial quantity of MD, she possessed the same for purpose of sell by making small pouches of 1 gram, 2 grams, 3 gram and 5 grams of MD. Further the family members of applicant including her mother, sister and sister's husband indulge in the illegal business of drug selling and if applicant is granted bail, she may commit same type of offence and will not co-operate in the investigation, hence prayed for rejection of application.

5. Perused application and say. Heard Ld. Advocate for the applicant as well as Ld. APP for the respondent. From the rival contention, it is referred that on 20/11/2022 the officers of informant,

while performing patrolling duty, found applicant standing suspiciously near scooty and taking out packet from her pant and selling over to one boy. Hence, upon the suspicion they apprehended the applicant, but the boy managed to ran away. It is further transpired that search of applicant was taken in presence of panch witness which resulted in recovery of 3.5 grams of MD from her right side pant pocket. Thereafter applicant was taken in the custody and FIR was registered. Prosecution claimed that since it was evening time, applicant was allowed to go with understanding to attend the police station in the morning, but applicant did not come to the police station as directed and she absconded. Whereas it is submitted on behalf of applicant that applicant was arrested on the day of alleged incident i.e on 20/11/2022. However, since then police did not call her. She was never absconding as alleged by respondent.

6. It is submitted on behalf of applicant that her search was conducted by police Sepoy who is unauthorised officer as per Section 42 of NDPS act and her search was taken in presence of male officer and therefore search is illegal. On perusal of the FIR, it is submitted that search of the applicant was conducted by lady Police Constable who is not empowered officer under Section 42 of NDPS Act who effect search, seizure and arrest of the accused. Therefore, search conducted by lady police constable is illegal search as held in catena of judgments of Hon'ble Bombay High Court. It also transpired that search of the applicant was taken in the gaze of male officers, which is in breach of provision of Section 50(4) of NDPS Act and Section 46 of Cr.P.C. Therefore, the search of the applicant is illegal.

7. Furthermore, the alleged contraband recovered from the applicant is 3.5 grams of MD. It falls under category of non commercial quantity as specified in the schedule given under the Act and the rigors of Section 37 of NDPS Act are not attracted. It is submitted on behalf of applicant that she has no criminal antecedent. She has permanent place of residence and she is not going to abscond. She is ready to abide any conditions imposed by the court. In such circumstances no purpose will be served if applicant is taken in custody. Recovery has been already completed and custodial interrogation of applicant is not warranted. So far as, apprehension of prosecution regarding commission of such type of offence by the applicant is concerned, same can be taken care of by imposing stringent conditions. Hence, I hold that applicant is entitled to grant of anticipatory bail. In the result I proceed to pass following order :

ORDER

1. Anticipatory Bail Application No. 2758/2022 is hereby allowed in following terms :

(i) In the event of arrest of applicant - **Deepa Ram Kalunke** by Dindoshi Police Station in connection with investigation in Crime No. 1141/2022 for the offences punishable under Sections 8(C) read with 22 of the NDPS Act 1985, she shall be released on bail on her executing PB and SB of Rs.30,000/- (Rs. Thirty Thousand only) with one or two sureties in the like amount.

(ii) Applicant/accused to report to the Investigating Officer for investigation purpose as and when called by IO till filing of charge-sheet.

(iii) Applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the

facts of the case so as dissuade them from disclosing such facts to the Court or to any police officer.

(iv) Applicant/accused shall not in any manner tamper with the prosecution witnesses.

(v) Applicant/accused is directed to supply her local address to the concerned police station where she intends to reside during investigation of the case.

(vi) Anticipatory Bail Application stands disposed of accordingly.

(V. V. PATIL)
Special Judge (N.D.P.S.),
City Civil & Sessions Court,
Gr. Mumbai

Date : 28.12.2022

Dictated on : 28.12.2022
Transcribed on : 28.12.2022
Signed on : 29.12.2022

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGEMENT/ORDER”		
UPLOAD DATE	TIME	NAME OF STENOGRAPHER
02.01.2023	11.15 a.m.	Mrs. S. S. Jadhav
Name of the Judge		HHJ Shri V. V. Patil (CR No.44)
Date of Pronouncement of Judgment/Order.		28.12.2022
Judgment/order signed by P.O. on		29.12.2022
Judgment/order uploaded on		02.01.2023