

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.475 OF 2022

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Krunal Dinesh Sagar

..Applicant

VS.

Union of India and anr.

..Respondents

Adv. Ravi L. Gurnani a/w Adv. Pradeep Hingorani a/w Adv. Reshmarani Nathani a/w Adv. Vivek Pandey i/b. Adv. Ravi Gurnani for the Applicant.

Mr. S. H. Yadav, APP for the State.

Adv. Shreeram Shirsat a/w Adv. Amandeep Singh Sra a/w Adv. Shekhar Mane a/w Adv. Nishi Singhvi a/w Adv. Anna Oommen for respondent NCB.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 8, 2023

P.C. :

1. Heard learned counsel for the applicant, learned counsel for the NCB Mr. Shirsat and learned APP for the State.

2. This is an application for bail by the applicant-Krunal Dinesh Sagar in connection with C.R. No.NCU/BZU/CR-21 of 2018 registered with Narcotics Control Bureau, Bombay Zonal Unit, Mumbai (hereafter "NCB", for short) for the offence punishable under Sections 8(c), 20(c), 23(c), 28, 29 and 30 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter "NDPS Act", for short).

3. In all there are five accused. The applicant is the accused No.3. The intelligence officer of the NCB received the specific information that one person named Pappu Chaudhary (accused No.1) would be travelling from Mau to Mumbai by Rajratan bus and reaching near Jai Kalika Mata Temple, Teen Hath Naka, Thane on 26/11/2018 at 7.30 hours. The information was that he would be carrying substantial quantity of charas and he is going to deliver charas to one person named Aniket Madan Singh (Accused No.2) r/o Kharghar, Navi Mumbai and one person namely the present applicant Krunal Sagar @ DJ Rawas (accused No.3) r/o Kandivali (West), Mumbai on the same day. The raiding party along with the NCB team waited discreetly at the spot. For convenience and for proper appreciation, the sequence narrated in the panchanama dated 26/11/2018 needs to be reproduced. The same reads thus :-

"At about 07.30 hrs., we noticed that one blue colour bus bearing vehicle no.MP09P3330 arrived slowly and stopped at a bus-stop opposite Jai Kalika Mata mandir at Teen Hath Naka, Thane. Rajratan was written on it. The NCB officials became alert and kept close watch from a distance.

Soon a man with dark complexion, fat body and average height came out of the bus. He was wearing a white colour T-shirt and grey pant and he was the only passenger

alighting there. He was carrying a brown colour backpack with him. Shri Rajesh Solanki had doubt about this person. Then the suspect person moved slowly towards a boy standing close to the stop. He was average height and thin built. The NCB team along with us were keeping watch on the suspect as well as the thin boy in yellow t-shirt. As the suspect approached towards the thin boy in yellow t-shirt and then took out a white polythene bag from his backpack and handed over to the boy, the members of NCB Mumbai team surrounded both of them. Shri Rajesh Solanki then introduced himself and his team-members to both the persons and enquired about their identity. The man who had arrived by bus disclosed his name as Pappu Chaudhary, R/o-Mau (M.P.) and the thin boy with yellow t-shirt who was waiting near the stop disclosed his name as Aniket Madan Singh, R/o-Kharghar, Navi Mumbai. Then Shri Rajesh Solanki disclosed to both of them about the information that he was carrying and about his intention to search their baggage and body. Then he explained both of them one by one about their right to be searched before a nearest magistrate or gazetted officer but both of them waived their right and agreed to be searched by the officer present there.

Thereafter, Shri Rajesh Solanki conducted personal search of Aniket Madan Singh and recovered a white polythene bag containing two silver foil packets of square shape from his hand. On being asked, Aniket disclosed that Pappu Chaudhary had just delivered him two packets with about 650 grams charas.

Then, Shri Rajesh Solanki conducted personal search of Pappu Chaudhary and found a brown colour backpack on his shoulder. Pappu Chaudhary was told to open the backpack and he showed another polythene bag containing 04 nos. of silver foil packets which he disclosed as about 2.5 kgs. of charas.

Shri Rajesh Solanki informed to both that charas is a narcotics and possession and carrying of charas is highly illegal under the NDPS Act, 1985. Immediately, Shri Solanki enquired Pappu Chaudhary whom he was going to deliver that 2.5 Kgs. charas, then Pappu Chaudhary disclosed that 2.5 Kgs. charas kept in his backpack is going to be delivered to one Krunal Sagar @ DJ Rawas R/o-Kandivali (W), Mumbai at the bus stop opposite HDFC bank near

Western expressway bridge, Borivali national park.

Thereafter, both of them were taken into NCB vehicle along with recovered suspected narcotics.

Full team of NCB officials led by Shri Rajesh Solanki took Pappu Chaudhary & Aniket Madan Singh and the polythene bags with recovered packets of charas kept in his packback and Aniket's person and proceeded towards Western expressway bridge, Borivali national park on his official vehicle. We also accompanied the team. We reached near the spot at around 09.00 hrs. and told Pappu Chaudhary to make a call to Krunal Sagar @ DJ Rawas r/o Kandivali (W) and asked him to come at the bus stop near the Western expressway bridge, Borivali national park to take delivery of charas. Pappu Chaudhary was told to stand near the bus stop with his backpack with charas packets. After some time, one Maruti brezza suv bearing no.MH47AB9406 arrived at the spot. We were keeping watch from a distance. A tall and big frame man with pony tail alighted from the brezza and approached Pappu Chaudhary and collected a polythene bag with 04 packets of charas from him. Immediately, the NCB Mumbai officials surrounded both of them. Shri Rajesh Solanki introduced himself and his team members to the tall man with pony tail by showing ID cards and enquired about his name. The tall man disclosed his name as Krunal Sagar @ DJ Rawas r/o- Kandivali (W). Shri Rajesh Solanki informed him about his intention to take personal search and also about his right to be searched before nearest magistrate or a gazetted officer. But Krunal Sagar waived his right and agreed to be searched by Shri Rajesh Solanki. Shri Rajesh Solanki conducted search and recovered a polythene bag with 04 packets of charas in it as disclosed by Krunal Sagar. Both Pappu Chaudhary and Krunal Sagar were told to seat in the official vehicle. Then, Shri Rajesh Solanki enquired Pappu Chaudhary about any more charas in his custody and Pappu Chaudhary disclosed that he is keeping about 2-3 kgs. of charas in his home at 09, Pension Pura, Mau, dstit-Indore (M.P.). Soon Shri Rajesh Solanki informed to the superintendent, NCB-Mumbai about the same telephonically and requested to send a team to Mau (Indore) for search of house of Pappu Chaudhary located at given address at the earliest.

Thereafter, as it was day time with heavy traffic, no

arrangement for paperwork and security, Shri Rajesh Solanki and his team took Pappu Chaudhary, Aniket Madan Singh, Krunal Sagar and polythene bags with silver foil packets of Charas and his backpack to the official vehicles and decided to proceed to NCB-Mumbai office at Ballard estate, Mumbai.

The NCB Mumbai team, we the panchas, the 03 suspects along with recovered narcotics reached NCB Mumbai office in two official vehicles at around 13.30 Hrs. with consent of 03 suspects.

In the NCB Mumbai office, the polythene bag with charas recovered from Aniket Madan Singh was taken and 02 square shape silver foil packets were taken out in our presence. One of the packets was opened and we noticed that bundle was wrapped with scotch-tape. It was further containing transparent polythene with multiple balls of dark brown substance. One of the balls was taken and a small scrap was taken from it. It was tested with field testing kit and the test indicated positive for charas. Then, the same testing was conducted on each of the dark brown balls and every time the resulted indicated positive for charas. Then all the balls of dark brown substance in the 02 packets recovered from Aniket Madan Singh's hand were taken and weighed. The total weight was = 652 grams. The remaining balls of dark brown substance purported to be Charas were kept in a bigger transparent polythene bag.

Then, the other polythene bag with 04 nos. of silver foil packets of narcotics recovered from Krunal Sagar @ DJ Rawas was taken. All the 04 packets were taken out and opened. Each of the packets was containing similar multiple balls of dark brown substance. A small scrapping from each of the ball was taken and tested with field testing kits. Each time the test indicated positive for charas. The total weight of contents of these 04 packets was = 2.348 Kgs.

Now as all the balls of dark brown substance purportedly charas recovered from all the 06 silver foil packets were same in colour, texture, odour and tests they were kept in the same polythene bag and a homogenous mixture was prepared. Then small scrapings from all the balls were taken. Two representative samples of 24 grams each were taken out from this mixture and kept in two separate small zip-locked polythene pouches. Then these pouches were

heat-sealed and kept in two separate white paper envelopes and marked as S-1 & S-2. The contents of the envelopes was mentioned on each of the sample envelopes.

The remaining bulk of multiple balls of dark brown substance purported to be Charas concealed in 06 silver foil packets were kept in the said big transparent polythene bag and weighed. The total weight after taking out 02 samples was = 2.952 Kgs. This big transparent polythene bag was also heat sealed and kept in a small carton-box and marked as – M. A label mentioning the contents of the carton-box was prepared and pasted on this carton-box.

The packing/concealing materials like silver foils, scotch tapes and transparent polythene used to conceal the dark brown balls of charas was kept in a carton box and marked as – P. A label mentioning the contents was prepared and pasted on it.”

(emphasis mine)

4. The applicant thus was arrested on 27/11/2018 and he is now in custody for more than 4 years and 2 months. I am informed that the trial is at the stage where the draft charges have been handed over to the trial Court but factually the charge has not been framed. There are approximately 19 witnesses to be examined. According to learned counsel for the NCB there is a possibility of examining less than 19 witnesses.

5. Though long incarceration is one of the ground urged which directly contravenes the applicant’s right to a speedy trial, having regard to the stringent provisions of Section 37

of the NDPS Act, the narrow parameters of the bail available will have to be taken into consideration.

6. At the outset, it must be noticed that there are call detail records between the accused No.1 and the present applicant (accused No.3) and also details regarding the monetary transaction in respect of the contraband which the accused No.1 was to handover to the applicant. I have to be conscious that the length of the period of his custody or the fact that the charge-sheet has been filed may not be the relevant considerations by themselves to be treated as persuasive grounds for granting relief to the applicant under Section 37 of the NDPS Act as observed by the Supreme Court in the case of **Narcotics Control Bureau vs. Mohit Aggarwal**¹.

7. The factors which persuade me to take a view in favour of the applicant for the purpose of releasing the applicant on bail are stated hereafter. A reading of the panchanama reproduced hereinabove reveals that 2.5 kg charas was in the backpack of the accused No.1 (Pappu Chaudhary) which was going to be delivered to the

¹ Criminal Appeal Nos.1001-1002 of 2022

applicant. Pappu Chaudhary (accused no.1) upon being informed of his rights to be searched in presence of the gazetted officer under Section 50, having waived his right, was duly search and the substance 'charas' was recovered from him. The charas was recovered from his backpack. The panchanama specifically records that the said charas was recovered from Pappu Chaudhary.

8. Learned counsel for NCB submitted that the charas was found in the backpack and therefore Section 50 would not be attracted (**Jarnail Singh vs. State of Punjab²**). So far as recovery from the accused No.1 Pappu Chaudhary is concerned, learned counsel for the NCB may have a point that Section 50 of the NDPS Act will not be attracted. What is material to note is that when the trap was laid to apprehend the applicant, the very same polythene bag with 4 packets of charas was handed over by accused No.1 to the present applicant which was recovered from accused no.1. Effectively, the substance which was already seized from the accused No.1, is handed over again to the accused No.1, who in turn hands over the same substance to the

2 (2011) 3 SCC 521

applicant.

9. The applicant thus was found with a polythene bag with 4 packets of charas. The charas was found on the person of the applicant is the same substance which was recovered from the backpack of the accused no. 1. Though in my prima facie view there is non-compliance of Section 50 of the NDPS Act while conducting the search of the applicant as no one in the raiding party is a gazetted officer, I must indicate that I have not heard learned counsel for the NCB in detail on the issue of non-compliance of Section 50 of the NDPS Act as I am satisfied that the applicant could be released on bail on the ground set out hereinafter.

10. The point is, once the substance was recovered from the accused no.1, could the said substance then be again handed over to the accused no.1 for further handing it over to the applicant thereby enabling the officials of the raiding party to lay a claim that the substance was found in possession of the applicant. In my opinion, once the substance was already recovered from the accused no.1, the raiding party could then have proceeded against the

applicant on the basis of other incriminating material against him. Upon recovery of the substance from the accused no.1, the officials should have proceeded to deal with the substance in consonance with the provisions of the NDPS Act instead of handing it over back to the accused no. 1. Such a procedure, according to me, cannot be countenanced. The recovery and the seizure, in my prima facie opinion, from the applicant is, therefore, illegal. Hence I record my satisfaction that there are reasonable grounds for believing that the applicant is not guilty of the alleged offence. There is one criminal antecedent reported against the applicant under the Maharashtra Prevention of Gambling Act, 1887. There are no criminal antecedents reported against the applicant under the NDPS Act. There is nothing to infer that the applicant is likely to commit any offence while on bail.

11. The circumstance that the applicant is in custody for more than 4 years and 2 months, is an additional factor weighing in favour of the applicant for enlarging him on bail. The trial is not likely to conclude any time soon.

Therefore, the applicant is released on bail. Hence, the following order :-

ORDER

- (a) Application is allowed.
- (b) Applicant-Krunal Dinesh Sagar shall be released on bail in connection with C.R. No.NCU/BZU/CR-21 of 2018 registered with Narcotics Control Bureau, Bombay Zonal Unit, Mumbai, on his furnishing P.R. Bond of Rs.1,00,000/- with one or more sureties in the like amount.
- (c) 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. The applicant shall not tamper with evidence.
- (d) The applicant shall report to the NCB office once in a month on every Saturday of the first week between 11.00 a.m. and 1.00 p.m.
- (e) 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.

12. The Bail Application is disposed of.

13. At this stage, learned counsel for the NCB requested

for staying the operation of this order. Considering the nature of the issue involved, I am inclined to accede to the request of learned counsel for the NCB. This order shall not take effect for a period of four weeks from the date of uploading.

(M. S. KARNIK, J.)