

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2038 OF 2014

1. Nasir Ahmed Abdul Ajij MeerApplicants
2. Tanvir Javed Meer

V/s.

The State of MaharashtraRespondent

AND
CRIMINAL BAIL APPLICATION NO. 2122 OF 2014

Omkar Prabhkar JadhavApplicant

V/s

The State of MaharashtraRespondent

Mr. P. G. Sarda for Applicant in Bail Application No. 2038 of 2014

Mr. Prakash Naik i/b Ganesh Bhujbal for Applicants in Bail Application No.
2122 of 2014

Ms. P. P. Shinde APP for the State.

Mr. S. T. Patil I. O. Bhosari Police Station

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : FEBRUARY 3, 2015

PC :

1) Heard. These are the applications under section 439 of Code of Criminal Procedure, 1973. Applicants herein were arrested on 20/06/2014 in crime no. 3084 of 2014 registered at Bhosari Police Station, Pune for offence punishable under sections 8 (c), 21, 22, 29 of Narcotic Drugs and

Psychotropic Substances Act.

2) It is the case of prosecution that on the basis of secret information, on 21/05/2014, at about 8.15 pm, police personnels of Bhosari Police Station had arrested accused nos. 1 to 3 in indulging into purchase and sale of brown sugar. At the time of arrest, brown sugar weighing about 326.5 gms was seized. It was worth Rs. 7,63,000/-. The contraband was of a commercial quantity. P.S.I. of Bhosari Police Station had seized the contraband, sent the samples for chemical analysis and had arrested the accused persons. In the course of investigation, it was revealed that present applicant in Criminal Bail Application No. 2122 of 2014 happens to be working as driver in the Indian Army. On 25/05/2014, investigating agency had arrested Tejas Ghugre. His statement was recorded while he was in police custody. He had allegedly disclosed to the police that in the year 2010-2011, applicant Omkar Jadhav had contacted him as he happens to be an old friend. He had informed that one of his friend would contact him and that he would be dealing into drugs. It is alleged that applicant Omkar Jadhav had disclosed the name of Tejas Ghugre as Sanjay Rane. Thereafter in the year 2014, friend of Omkar Jadhav had again contacted Tejas Ghugre and had dealing in drugs. It is alleged that

ism

through the said contact, they had met Sourabh & Sandip. They had sold drugs worth Rs. 7,00,000/-. As far as transaction of the year 2014 is concerned, no role is attributed to applicant Omkar Jadhav.

3) It is pertinent to note that statement of Tejas Ghugre was recorded while he was in police custody. Said statement has been signed by the deponent in utter violation of provisions under section 161 & 162 of Code of Criminal Procedure, 1973. Investigating officer is present in the Court. Upon inquiry with the learned APP, it is submitted that this is the first case which he is investigating under the provisions of Narcotic Drugs and Psychotropic Substances Act. In any case, this cannot be an excuse for the lapses in investigation.

4) It is pertinent to note that three accused persons from whom contraband was seized on 21/05/2014 have been enlarged on bail by Additional Sessions Judge, Pune vide Order dated 12/01/2015. They have been enlarged on bail since C.A. report reads thus:

“No Heroin is detected in the exhibit Nos. (1) and (2). They do not give positive chemical tests for commonly abused narcotics like morphine, codeine, methadone, depressants like barbiturates, benzodiazepines, methaqualone, stimulants like amphetamines, cocaine, caffeine etc and

hallucinogens like cannabis and lysergic acid diethylamide (LSD)”.

5) The role attributed to Omkar Jadhav is that he had introduced alleged dealer in drugs to Tejas Ghugre and the other co-accused. Applicant No. 1 in Criminal Bail Application no. 2038 of 2014 was also working in the Indian Army. He was posted at Kupwada. He was working as core driver. He was also arrested on 20/06/2014. On 22/06/2014, while he was in police custody, his statement was recorded. He had disclosed to the police that in November 2013 one Bhausahab Dhage (Absconding accused) who was also working in the Army had kept a packet of brown sugar in the India Car in VIP suitcase which was placed in the Dikki of the said vehicle. He had informed Nasir Ahmed Meer that the said packet contains medicines. Subsequently Bhausahab Dhage had told Nasir Ahmed Meer that his friend who is working in 19 Maratha Battalion and is posted at Jammu would be approaching him and the said packet is to be entrusted to the said friend. At that time, applicant no. 1 had informed Bhausahab Dhage that his cousin Tanvir Javed Meer i.e. present applicant no. 2 in Criminal Bail Application No. 2038 of 2014 was going to Jammu. He had given the phone number of Tanvir Meer. That Bhausahab Dhage had transferred the total amount of Rs. 30,000/- in the

ism

account of applicant no. 1 Criminal Bail Application No. 2038 of 2014 on 16/05/2014 & 17/05/2014. The said transaction is of 17/05/2014.

6) Learned APP submits that accused persons were apprehended along with contraband were arrested on 21/05/2014. Hence, according to learned APP, this could clearly establish that Nasir Ahmed Meer was involved into purchase and sale/transportation of drugs. It is pertinent to note that investigating officer has recorded the statement of Nasir Ahmed Meer while in police custody under section 161 of Code of Criminal Procedure, 1973 and has obtained his signature thereupon. Similar is the case with Tanvir Meer. It is pertinent note that on 15/06/2014, statement of Tanvir Meer was recorded as a witness under section 161 of Code of Criminal Procedure, 1973. Said statement is also signed by the deponent in utter violation of mandatory provisions of Code of Criminal Procedure, 1973.

7) That principal accused have been enlarged on bail. That the C.A. report do not substantiate allegations of the prosecution that the seized contraband was covered under any of the heads under Narcotic Drugs and Psychotropic Substances Act. Applicants herein are said to be remotely connected with the people who had been arrested on 21/05/2014. Evidence against present

applicants is in the form of statements of co-accused which was recorded while they were in custody. The admissibility of the said statement can be considered at the time of trial. At the stage of investigation/inquiry, statement of co-accused would only give a direction for proper investigation, however, the same has to be corroborated by some material particulars at the stage of investigation.

8) Learned APP submits that co-accused Bhausahab Dhage is absconding and therefore, applicants shall not be released on bail. Upon instructions from the investigating officer, who is present in the Court, learned APP submits that investigating officer has not recorded the statement of any Army Officer in respect of whereabouts of Bhausahab Dhage.

9) Investigation has not been carried out in a proper manner and therefore, present applicants cannot be subjected to incarceration for lapses on the part of investigating officer. Applicants have made out prima facie case for grant of bail. It is made clear that observations made herein above are prima facie in nature and shall not be considered for quashing of F.I.R., discharge application or at the time of trial as they pertain to considering an application under section 439 of Code of Criminal Procedure, 1973.

ORDER

- (i) Both applications are allowed.
- (ii) Applicants be enlarged on bail on furnishing P. R. bond in the sum of Rs. 15,000/- each and one or two sureties in the like amount.
- (iii) Applicants after being enlarged on bail, shall furnish proof of their residential address, cellphone/landline no to the investigating officer.
- (iv) Applicants shall report to Bhosari Police Station on first Sunday of every month till the conclusion of trial.
- (v) Applicants shall deposit their passport (if,any) with the investigating officer.

Applications stand disposed of.

(SMT. SADHANA S. JADHAV, J.)