

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2992 OF 2016

S.M. Senthil Kumar,
Age : 40 years, Occu. : Business,
Resident of C-2, 39/81,
Deepika Meenakshi Flats,
2nd Floor, Kameshwar Koli Street,
Mylapore, Chennai – 600 004,
Tamil Nadu

.. Applicant

Vs.

The Directorate of Revenue Intelligence,
New Marine Lines, Mumbai – 400 020

.. Respondent

Mrs. Asha S. Rasal, Advocate for the applicant

Mr. S.B. Deshpande, Assistant Solicitor General for the
respondent

CORAM : A.S. CHANDURKAR, J.

DATE : 09/12/2016

ORDER :

Heard.

2. The applicant, who has been arrested in connection with Crime no.F.No.DRI/MZU/C/INV-12/2013-14 registered by Intelligence Officer, Directorate of Revenue Intelligence, New Marine Lines, Mumbai for the offences punishable under Sections 8(c) read with Section 29 and Section 22(c), Section 8(c) read with

Section 22(c), Section 25 and Section 27A read with Section 8(c) and Section 29 read with Section 23(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "**the said Act**"), seeks his release on bail.

3. Information was received by the Intelligence Officer of the Directorate of Revenue Intelligence that about 300 kg of Ketamine HCL, a psychotropic substance, was being transferred from Jalgaon to Mumbai in three vehicles were deployed for the said purpose. When the said three vehicles entered the premises of M/s. Bio-Synthetics, Umala Shivar at Jalgaon, they were intercepted. The occupants of the vehicles were interrogated and 100 kg of Ketamine was found in the vehicles while 975 kg of Ketamine was seized from premises of M/s Bio-Synthetics. The value of said Ketamine was claimed to be Rs.1,17,50,00,000/-. Pursuant thereto, aforesaid offence came to be registered, in which the present applicant has been arrayed as accused no.11. He has been arrested on 4/1/2014.

4. It is submitted by Mrs. Asha Rasal, learned counsel for the applicant that the alleged psychotropic substance – Ketamine is not covered under the provisions of the said Act and therefore, no offence has been made out. It is submitted by relying upon a gazette notification dated 7/11/2013 issued by the Ministry of Health and Family Welfare that Ketamine Hydrochloride has been inserted in Schedule X of the Drugs and Cosmetics Rules, 1945. This notification has come into force in the State of Maharashtra with effect from 4/1/2014 which is after registration of the offence. It is then submitted that the alleged statements of the applicant recorded under Section 67 of the said Act stand retracted and hence the same cannot be looked into for the purpose of implicating the applicant. No recovery whatsoever of the alleged psychotropic substance has been made from the applicant. The only statements relied upon by the prosecution are those of the co-accused and most of these statements have already been retracted. The only material against the applicant is with regard to his stay at Hotel Fortune Park Lakecity. It is therefore submitted that aforesaid material is insufficient in nature and hence a strong

prima facie case has been made out by the applicant. Moreover, the Company from where the alleged seizure was effected was having the license for manufacture of Ketamine hydrochloride.

. Reference was thereafter made to the order dated 23/4/2015 passed by this Court in Criminal Application No.7026 of 2014, to urge that though it was expected by this Court that the trial would be concluded within a period of eight months, the same has not happened. Though the trial has commenced, only 1 witness has been examined by the prosecution and according to the prosecution, almost 100 witnesses are to be examined. In that regard, reliance was placed on the judgment of the Hon'ble Supreme Court in the case of **Thana Singh Vs. Central Bureau of Narcotics (2013) 2 S.C.C. 603**. By relying upon the decision in the case of **Tofan Singh Vs. State of Tamil Nadu** (Criminal Appeal No. 152 of 2013 decided on 8th October, 2013), it was urged that the legal effect of statements recorded under Section 67 of the said Act was under consideration of a larger Bench. Reliance was also placed on the judgment of the Karnataka High Court in **Sridhar Punachithaya K.**

Vs. The Intelligence Officer (Criminal Petition No.3468/2016 decided on 28th June, 2016). It was therefore submitted that the applicant is entitled to be released on bail.

5. Mr. S.B. Deshapnde, learned Assistant Solicitor General of India appearing for the respondent opposed the aforesaid application. It was submitted that the present application itself was not tenable in view of the fact that in the earlier order dated 23/4/2015 passed by this Court in Criminal Application No.7026 of 2014, this Court had *prima facie* found involvement of substantial quantity of Ketamine and had hence refused to bail out the applicant. There was no substantial change or any changed circumstance to warrant reconsideration of the prayer of the applicant. It was then submitted that Ketamine HCL has been inserted in the Schedule to the said Act vide Entry no.110-A with effect from 10/2/2011. It was urged that reliance placed by the learned counsel for the applicant on the notification dated 7/11/2013 was misplaced as the same was under the provisions of the Drugs and Cosmetics Act. The statements of various persons recorded under Section

67 of the said Act were relied upon to indicate that there was sufficient material on record to indicate complicity of the applicant in the aforesaid offence. It was submitted that under the provisions of Section 37(1)(ii) of the said Act, there were no reasonable grounds to believe that the applicant was not guilty of the aforesaid offence and that he was not likely to commit any offence while on bail. He distinguished the judgments relied upon by the learned counsel for the applicant and also placed reliance upon the judgment of the Madras High Court in the case of **S.P. Rajapandian and Hiren Vora @ Ambani Vs. Senior Intelligence Officer 2011 DGLS (AHC) 23864**. It was therefore submitted that the present application was liable to be rejected.

6. I have considered the respective submissions and I have gone through the material placed on record. As per earlier order dated 23/4/2015 passed in Criminal Application No.7026 of 2014, learned Single Judge of this Court, after considering the report of the learned Special Judge that the trial would be concluded within a period of eight months and after further recording a *prima facie* finding with regard to involvement of

substantial quantity of Ketamine, rejected the said application. Though I find substance in the objection raised by learned Assistant Solicitor General of India that the rejection of the earlier application was after *prima facie* holding against the present applicant on merits, the said order indicates that the report of the learned Special Judge that the trial would be concluded within a period of eight months from said date also weighed with the learned Single Judge while rejecting the said application. The record indicates that said period of eight months has come to an end and presently, only one witness has been examined by the prosecution. Considering the observations made in paragraph no.11 of the aforesaid order with regard to conclusion of the trial within a period of eight months and the same not having been concluded, I have considered the prayer made by the applicant for release on bail on merits.

7. It is to be noted that as per entry no.110-A to Schedule to the said Act, Ketamine has been included as a psychotropic substance with effect from 10/2/2011. The offence in question has occurred thereafter. The notification dated 7/11/2013, relied upon by the learned

counsel for the applicant is in relation to insertion of the item "Ketamine Hydrochloride" in the Schedule X of the Drugs and Cosmetic Rules, 1945. I do not find said notification dated 7/11/2013 relevant for the present purposes, in view of the fact that as per Entry no.110-A to the Schedule to the said Act, Ketamine stands inserted as a psychotropic substance with effect from 10/2/2011.

8. As regards the submission that the statements made under Section 67 of the said Act cannot be taken into consideration on the ground that the question as to whether the Officer investigating the matter under the said Act would qualify as the Police Officer or not, has been referred to larger Bench of the Hon'ble Supreme Court, the pendency of said issue would not preclude the Court from considering the earlier decisions holding the field as of today. Considering the earlier precedents referred to by the Hon'ble Supreme Court in the decision in **Tofan Singh** (supra), for the purposes of considering the present application, these statements made under Section 67 of the said Act are being taken into consideration.

9. Though, it was submitted on behalf of the applicant that statements of various co-accused made under Section 67 of the said Act and relied upon by the prosecution had been retracted, that by itself would not be a ground to hold in favour of the present applicant. Besides the statements of the co-accused, there are statements of witnesses other than the co-accused, which constitute material which I find is sufficient to hold that under Section 37(1)(ii) of the said Act that there are no reasonable grounds to believe that the applicant was not guilty of such offence. Reference in that regard can be made to the statements of Vishweshwar J. Sonawane, Khaja Mohideen and Ms. Juli Narvankar. Similarly, various vouchers placed on record in context with the stay of the applicant at hotel Lerida can be taken into consideration. The statement of Khaja Mohideen that consignment of Ketamine of almost 600 kg was supplied to the applicant by another accused – Shri Vikas Puri. Similarly, the applicant had spoken to him on mobile and had placed an order for 300 kilograms of Ketamine. He has also referred to payments being made by the applicant through hawala channels. Said Khaja

Mohideen also collected an amount of Rs.50 lakhs from the applicant towards payment for supply of Ketamine. Thus, I find that there is sufficient *prima facie* material on record to connect the present applicant with the crime in question. Hence, I find that the applicant has not been able to make out any reasonable grounds for believing that he is not guilty of the offence alleged and that he is not likely to commit any offence while on bail.

10. As regards the decision in the case of **Thana Singh** (supra), the accused therein was in custody for more than twelve years which was half the period of the maximum punishment provided and there was no prospect of the trial being concluded in the future. In the present case the applicant is in custody since 4/1/2014 and the trial is in progress. The decision of the Karnataka High Court also does not assist the case of the applicant.

11. In view of aforesaid, I am not inclined to consider the Application favourably. Same is accordingly rejected by clarifying that observations

made in the order are only for deciding the present application. The learned Special Judge shall expedite the conduct of the trial keeping in view the earlier order dated 23/4/2015 in Criminal Application No.7026 of 2014.

Sd/-

[A.S. CHANDURKAR]

JUDGE

arp/