

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1466 OF 2015

Mr. Nwadibia Sabinus Nnadi.

...Applicant.

vs.

Intellegence Officer and anr.

...Respondents.

Mr. Ayaz Khan with S.S. Bhandary for the Applicant.

Ms. Rebecca Gonsalvez for Respondent No.1

Mrs. S.S. Kaushik, APP. for the State.

CORAM : A.S.GADKARI, J.

DATE : 23rd February, 2016

P.C.

The applicant is seeking bail in NDPS Special Case No.31 of 2014 pending on the file of the Additional Sessions Judge, Thane.

It is the prosecution case that on receipt of specific information that the applicant had stored and was likely to indulge in the transaction of Ephedrine a controlled substance and Methamphetamine, a psychotropic substance, conducted a raid at the residential premises of the applicant on 3.7.2014. The applicant and his wife were found to be in occupation of the said premises. That, when the NCB office conducted the raid under the directions of superiors at the residence of the applicant, his wife the co-accused flushed out substantial quantity of Ephedrine in toilet. At the time of the said raid the applicant was found in possession of 3.350 Kg. of Methamphetamine and 5.410 kg. Of Ephedrine. A detailed panchanama of the said raid has been recorded by the NCB dated 3.7.2014. After completion of the investigation, the Investigating Agency has filed the complaint in the Court of Special Judge under NDPS Act, at Thane.

2) The learned counsel for the applicant submitted that

Ephedrine is a controlled substance and is not Narcotic drug. He further submitted that maximum sentence under Section 25A is 10 years. That the applicant was arrested on 3.7.2014 and since then he is in Jail. He further submitted that as far as seizure of Methamphetamine weighting 3.350 Kg. is concerned, the Chemical Analyzer's report has negated its presence. He further submitted that the provisions of Section 37 of the Act are not attracted as the applicant is charged under Section 9(a) read with Section 25(a) of the NDPS Act. In support of his contentions, he relied on two decisions of this Court in the case of **Rafael Palafox Garcia Vs. The Union of India and anr. (Criminal Application No.2015/2008) dated 25.9.2008** and in the case of **Faiyaz Ahmed Rasool Shaikh vs. Union of India and anr. (Criminal Application No.165/2011) dated 5/5/2011**.

It is to be noted here that this Court while granting bail to the accused persons in the aforesaid decisions has held that as far as controlled substance is concerned, there is no categorization of small quantity or commercial quantity. It is further held in the case of Rafael Palafox Garcia (supra) that a controlled substance is not necessarily used only to make narcotic drugs or psychotropic substance but it is a versatile substance which can be used in manufacturing of various things including innocuous medicines by the pharmaceutical industry. That, as far as controlled substance are concerned, there is no provision for minimum term imprisonment under the law under Section 19, 27 and 27A of the NDPS Act.

3) After taking into consideration the view taken by this Court in the aforesaid two decisions and the fact that Ephedrine being a controlled substance and that the applicant was arrested on 3.7.2014, I am inclined to release the applicant on bail.

Hence, the following order.

ORDER

- a) The applicant be released on bail in NDPS Special Case No.31/2014 on his furnishing PR bond of Rs.50,000/- with one or two solvent local sureties in the like amount.
- b) Before his release from Jail, the applicant shall provide the documents pertaining to his residential address where he intends to reside after his release to the NCB and the NCB shall verify the authenticity of the said documents. The applicant is permitted to submit those documents along with an affidavit.
- c) After the documents pertaining to the residence of the applicant are verified by the NCB the applicant shall not change the residential premises without prior permission of the Trial Court.
- d) Before his release the applicant shall also get Certificate from Nigeria Embassy about the fact that he is a national of Nigeria.
- e) After his release from Jail, the applicant shall attend the NCB Office, Mumbai between 1.00 a.m. To 1.00 p.m. on every 1st and 3rd Monday of the month, till the conclusion of the trial.
- f) The applicant shall also attend all the date of the Trial Court.
- g) The applicant shall not tamper with the evidence and or influence the prosecution witnesses.
- g) Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)