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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1938 OF 2015

Mukesh Budhulal @ Bachulal Mevade

..Applicant.

Vs.

The State of Maharashtra

..Respondent

Mr. Rajendra S. Bidkar for Applicant.

Ms. Rutuja Ambekar, APP for the State.

CORAM: A.S. GADKARI, J.

DATE : 18th January 2016.

P.C.

1 The applicant is seeking bail in CR No.254 of 2014 registered with Anti-Narcotic Cell, Mumbai dated 8.5.2014 under Section 8(c), 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2 It is the prosecution case that, on a specific information received by the police officer, a trap was laid and the applicant was accosted on the spot. After giving appraisal as contemplated under Section 50 of the NDPS Act, search of the applicant was taken wherein 270 grams

of Heroin was seized on the person of the applicant. After completion of the investigation, the Investigating Agency have filed the chargesheet.

3 The learned Counsel for the applicant submitted that the applicant is in jail since 8.5.2014. He submitted that the police officer namely Police Inspector Shri Sangle has alleged to have been conducted the said raid under the orders of Senior Officers. He drew my attention to the station diary entry Nos/10, 16 and 20 dated 8.5.2014. While recording Entry No.10, it is stated that Police Officer Shri Sangle along with other team members left the office at about 11.50 a.m. to conduct raid near Mahalaxmi Railway Station bus stop as per information. The station diary entry No.20 which is recorded at about 20.30 p.m. (8.30 p.m.) mentions that the said police officer Shri Sangle along with his team members returned to his office after conducting the said trap. That the station diary entry No.16 recorded at 18.50 p.m. (6.50 p.m.) mentions that the Police Sub Inspector Shri Kamble and his team members effected the said entry stating that when the social worker from the area of Sat Rasta, Jacob Circle gave information that some persons were consuming Charas and Ganja in the locality, the Police Sub Inspector Shri Kamble apprehended three persons and the said persons were produced before the In-charge Officer of Anti-Narcotic Cell on the charge that the said persons were consuming and

selling narcotic drugs. It is mentioned in the said entry that the Police Inspector Shri Sangle enquired with the said persons and thereafter they were allowed to go after giving admonition. The learned Counsel for the applicant therefore contended that the entries made in the station diary bearing nos.10 and 20 dated 8.5.2014 are doubtful. That the said officer namely Shri Sangle did not actually participate in the said raid.

4 I have perused the charge sheet. It appears that the distance between the place where the present applicant was apprehended and the office of the Anti-Narcotic Cell does not have much distance. That the procedure of apprehension of applicant and the completion of the paper work in the present crime started after 11.50 a.m. and lasted upto 8.30 p.m. As per station diary entries, the panchanama effected by the police which is at page No.24 of the present compilation discloses that the said panchanama was completed at about 15.40 (3.40 p.m.) on 8.5.2014. There is no evidence on record to infer that the said Officer Shri Sangle remained at the spot even after completion of basic procedure of apprehension of the applicant. Merely because there is station diary entry maintained by the Anti-Narcotic Cell, at this stage drawing an adverse inference against the Investigating Agency is too preposterous and the applicant cannot claim benefit of the same without proving his allegation at the trial.

5 The learned Counsel for the applicant thereafter would contend that though the police seized the alleged heroin powder from the person of the applicant which was weighing 270 grams, after the chemical analysis of the same it was found to be mixture of Heroin (diacetylmorphine) along with other opium alkaloids and Alprazolam. He further submitted that the percentage of the said three drugs is also mentioned in the said report. According to him as per the said analysis, the opium alkaloids found in the said powder are 230.44 grams, Heroin found to be of 30.96 grams and Alprazolam found to be 3.591 grams. He therefore submitted that in view of the Entry No.239 of the Schedule annexed to the NDPS Act, none of the contents of the said mixture fall within the purview of commercial quantity. He therefore submitted that it is difficult to hold that the applicant was in possession of any of the drugs of commercial quantity and therefore the Sections charged against him do not attract in the present crime.

6 I have perused the report of the Chemical Analyser and other documents. It is to be noted here that the Entry No.93 in the Schedule annexed to the NDPS Act deals with Opium derivative which describes

small quantity as 5 grams and commercial quantity as 250 grams. Then Entry No.56 of the said Schedule describes small quantity of Heroin as 5 grams and commercial quantity as 250 grams. Thus it is seen that the mixture of the powder which was found on the person of the applicant was containing Heroin above small quantity, however, lesser than commercial quantity. As far as opium alkaloids is concerned, the mixture contained 230.44 grams of it which as per entry No.93 of the Schedule is undoubtedly above small quantity, however, just little than the commercial quantity. It is to be noted here that the powder/contraband which was found on the person of the applicant contains mixture of three different narcotic drugs or psychotropic substances. Though there is no specific scientific name mentioned for the said mixture, prima facie it appears that the said mixture was prepared with a view to defeat the provisions of NDPS Act. The evidence on record discloses that the applicant was apprehended after receipt of specific confidential information that the applicant was to indulge in dealing of the narcotic drugs.

7 In view of the above and after taking into consideration the evidence on record, I find that the applicant has failed to make out any prima facie case to be released on bail. I find no merits in the present application and the same is accordingly dismissed.

8 As the applicant is arrested on 8.5.2014 and since then he is in jail, the Trial Court is hereby requested to make an endeavour to conclude the trial pertaining to C.R. No.254 of 2014 registered with Anti-Narcotic Cell within a period of one year from today.

(A.S. GADKARI,J.)