

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.910 OF 2018

Firdaus Razak Nathani @ Firoz @
Maheshbhai Patel @ Mukeshbhai Patel,
Age 41 years, R/o.Room No.8, Haji Suleman Colony,
Desra Road, Bilimora, Tal.Gaderi,
Dist.Nausari, Gujarat (At present in
Judicial Custody at Arthur Road Jail) Applicant
versus
The State of Maharashtra Respondent

Mr.Dilip Mishra I/by Ayaz Khan for applicant.
Ms.A.A.Takalkar, APP, for State.
Mr.Vishal C. Khaire, API, Anti Narcotic Cell, Bandra, Mumbai.

CORAM : PRAKASH D. NAIK, J.

DATE : 26th September 2018

PC :

1. This is an application for bail. The applicant is arrested on 11th February 2017 in CR No.2 of 2017 dated 9th January 2017 for offence under Sections 8(c) r/w Sections 22(c) and 29 of NDPS Act.

2. The prosecution case is that the Anti Narcotic Cell ('ANC'), Ghatkopar Unit had received information that a person by name Pravin Waghela is in the business of Mephedrone. On 9th January 2017 between 1330 to 1630 hours said person is coming in a white colour Honda Civic car bearing registration No.MH-05-AH-909 for selling the same to his customers. The said information was reduced in writing in register and conveyed to in-charge Police Inspector Bhalekar. On further instructions, the information was reduced in

the station diary. The raid was organized under the supervision of Police Inspector Bhalerao. At around 1435 hours, the car occupied by the person described in the information was noticed. The raiding party members apprehended accused no.1. The search of accused no.1 resulted in recovery of black plastic bag containing white crystalline power weighing 200 gms alleged to be Mephedrone. On search of the car, the raiding party recovered black sack bag containing white crystalline power of 10 kgs. During the personal search, mobile phone, documents regarding to car were recovered from the accused. The accused no.1 was arrested for aforesaid offence. During the course of investigation panchanama dated 10th January 2017 was drawn at the behest of accused no.1 who lead the police to a premises in Karnataka. During the course of investigation certain chemicals were seized. Accused no.2 was found present in the premises and he was taken in custody for investigation and arrested on 12th January 2017. They were produced before the Court for remand and were remanded for custody from time to time. The applicant was arrested on 11th February 2017 on the basis of alleged statement of co-accused. In the remand application it was alleged that the applicant had exported certain consignments through different courier companies. The statements of witnesses were recorded and after completion of investigation, charge sheet has been filed.

3. The applicant preferred application for bail before the Sessions Court which has been rejected on 3rd November 2017.

4. Learned counsel for applicant submitted that there is no cogent evidence to show active participation of the applicant in the

crime. The name of applicant was not reflected in first two remand applications. He was arrested on the basis of statements of co-accused recorded during the course of investigation. Such a statement is not admissible in evidence. The statements of witnesses from the courier company were recorded on 8th June 2017. It is submitted that there is no chemical analysis report in respect of the consignments exported allegedly out of India. No document of consignment is filed in the charge sheet indicating that applicant was the person who sent the consignment in different names. There are no criminal antecedents against present applicant. Section 37 does not attract to the case.

5. Learned APP submitted that the accused are charged with offence under Sections 8, 22, 23 and 29 of NDPS Act. Section 23 relates to export. The statements of witnesses recorded during the course of investigation indicate that applicant had exported certain consignment from different companies in different names. The said statements constituted charge u/s 23 of the NDPS Act. The applicant was in conspiracy with co-accused. He had exported mephedrone out of India through food articles. He is also charged under Section 29 of NDPS Act. The co-accused were found in possession of mephedrone which was of commercial quantity. It is submitted that during the course of investigation the co-accused has disclosed complicity of applicant. Involvement of applicant is corroborated by the statements of witnesses from the courier company.

6. It is apparent that the co-accused were arrested on the respective dates as stated above. The accused no.1 was found in possession of alleged contraband. There is no recovery at the

instance of applicant. He was arrested on the basis of statement of co-accused. Such a statement is not admissible in evidence. I have also perused the statements of witnesses from courier company recorded by the investigating machinery. The statements of Amit Desai, Smt.Bhavini Khatri and Deepakkumar Rana were recorded. In the statement of Mr.Desai recorded on 8th June 2017, it is stated that on 8th February 2016 applicant had visited their courier office. He was introduced with another name and he represented that he wants to send some eatables to his friend to U.K. He had provided packets weighing 6 kgs. It was noticed that there was powder substance like sugar and on inquiry the accused informed that it is mephedrone and in U.K. sugar is known as mephedrone. The packet was sent to U.K. and again on 17th February 2016 similar packet was sent. Similarly Bhavini Khatri has also referred to packets being sent to U.K with similar explanation. The packets were allegedly sent in 2016. Witness Dipak Kumar Rana has also referred to similar transaction. In the said statements they have referred to the chart of consignments forwarded through courier. It is also indicated that the consignments were in respect to the eatables. The charge of conspiracy has to be substantiated by cogent evidence. On perusal of order passed by NDPS Special Court, it is apparent that another objection urged by prosecution is that mobile hand set of all accused were seized. Applicant and accused no.1 had made calls to U.K. on certain mobile phone numbers. Thus, there was conspiracy between the accused. Prosecution relied on CDR report having alleged contact between accused and the person having particular mobile number. Accused no.1 had allegedly made calls to applicant. The calls are between 1-6-2016 and 10-12-2016. In the present case information was received on 9-1-2017 and the accused were arrested

on 9-1-2017 and 12-1-2017. Applicant's name was not disclosed in information received by police, nor in FIR. Accused no.1 was arrested with contraband. It was argued at the instance of applicant that the hand set owned by applicant being number 7201865600 and the accused no.1 having sim no.7388236821 were not seized. The CDR reports do not have authenticity. It was also submitted that charge sheet does not show any call made by applicant to accused no.1. The investigation did not travel beyond as stated above. There is nothing on record to indicate that the said consignments were containing Mephedrone or any other narcotic substance.

7. It is difficult to accept that the accused had informed the courier company that he was sending Mephedrone in their consignments by labeling the same as eatables. There are no criminal antecedents against applicant. In the factual circumstances of present case, embargo under Section 37 of the NDPS Act would not be attracted in the present case. The applicant is, therefore, entitled for bail.

8. Hence, I pass following order :

ORDER

(i) Criminal Bail Application No.910 of 2018 is allowed and disposed off;

(ii) The applicant be released on bail in CR No.2 of 2017 registered with Anti Narcotic Cell, Ghatkopar, on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

- (iii) The applicant shall attend the Court during the course of hearing regularly, unless exempted by the Court for some reason;
- (iv) The applicant shall report Anti Narcotic Cell, Bandra once in a month on every first Friday of month between 10 am and 12 noon till further orders.

(PRAKASH D. NAIK, J.)

MST