

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.924 OF 2018

Rohan Gawans

.. Applicant

Vs.

Union of India

(Narcotic Control Bureau) & Anr.

.. Respondents

.....

Mr.Ashhok P. Mundargi, Senior Counsel I/b. Mr.Ayaz Khan a/w.
Zehra Charamia, Advocate for the Applicant.

Rati Amrolia, Advocate for Respondent No.1.

Mr.S.R. Agarkar, APP for the Respondent - State.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 10, 2018.

P.C. :

This is an application for bail in NDPS Special Case No.12 of 2018. Applicant was arrested on 19th July, 2017. The offences were registered under Sections 8(c), 22(c), 23 read with 28 and 29 of the Narcotics Drugs and Psychotropic Substances Act ("NDPS Act", for short).

2 The brief facts of the prosecution case are as under:

On 25th February, 2015, information was received that a person by name Sanjay Jain is in possession of substantial quantity of Mephedrone. Accordingly, raid was conducted at the place of Sanjay (accused no.1). The search resulted in recovery of 5 kgs. Mephedrone. Subsequently, one Chandramani Pandey, i.e. accused no.4 arrived at the said place and he was apprehended. On interrogation, it was revealed that he had visited the said premises for collection of 2 kgs. of Mephedrone. Thereafter, Pramod Pandey (accused no.2) and Lalit @ Laduram Kumavat (accused no.3) entered the premises. On inquiry, it was learnt that Pramod Pandey had supplied the contraband to Sanjay Jain. Lalit @ Laduram Kumavat confirmed that he used to procure 1 ½ kgs. of Mephedrone from Sanjay Jain and sell it in retail. Panchanama was initiated at 21:45 hrs. on 25th February, 2015 and was completed at 5:00 hrs. on 26th February, 2015. All the four persons were arrested on 26th February, 2015. Their statements were recorded on 26th February, 2015. Their statements were recorded on 26th February, 2015. Information was received by Pramod Pandey (accused no.2) that consignment of 25 kgs. of Mephedrone would be delivered to two persons i.e. Ankit Kapoor (accused no.5) and Rakesh Kapoor (accused no.6) by one Jogabhai (accused no.8) and Nanji Ram (accused no.9) at

17:00 hrs on 26th February, 2018, near hotel Regency at Andheri (East), Mumbai. Accordingly, another raid was conducted at the above-mentioned spot with the help of accused no.2 Pramod Pandey. It was noticed that Jogabhai (accused no.8) and Nanji Ram (accused no.9) were handing bags to Ankit Kapoor (accused no.5) and Rakesh Kapoor (accused no.6). They were all intercepted and search of the bag resulted in the recovery of 25 Kgs. of Mephedrone and cash amount of Rs.5,00,000/-. The same was seized under panchanama on 26th February, 2015. During interrogation of Jogabhai (accused no.8) and Nanji Ram (accused no.9), it was revealed that the consignment was procured from Parag Mehta (accused no.7). In pursuant to that Parag Mehta was apprehended from his residence. Statement of Parag Mehta reflects that he had procured the contraband from the present applicant and given to Jogabhai (accused no.8) and Nanji Ram (accused no.9). Statements of Ankit Kapoor, Rakesh Kapoor, Parag Mehta (accused no.7), Jogabhai (accused no.8) and Nanji Ram (accused no.9) were recorded under Section 67 of NDPS Act. Parag Mehta, Jogabhai and Nanji Ram were arrested on 27th February, 2015. Ankit Kapoor and Rakesh Kapoor were arrested on 28th February, 2015. After completion of investigation, complaints were filed against nine persons. The case was

registered as NDPS Special Case No.31 of 2015. On 16th December, 2015, accused Rajan Rajput was apprehended as his name was revealed in the statement of Ankit Kapoor and Rakesh Kapoor. Statement of Rajan Rajput was recorded on 16th December, 2015, and, he was arrested on 17th December, 2015. His further statement was recorded on 17th December, 2015 and 21st December, 2015. On completion of investigation, fresh complaint was filed against him and the same was registered under NDPS Special Case No.23 of 2016. Subsequently, accused Krishanmbuj Kumar was apprehended on 17th January, 2016 as his name was revealed in further statement of Pramod Kumar Pandey (accused no.2). His statement was recorded and he was arrested. The statement of the said accused was recorded and subsequently he was arrested on 18th January, 2016. On completion of investigation, charge-sheet was filed and the case was registered as NDPS Special Case No.37 of 2016. On 19th July, 2017, applicant was apprehended by the immigration officer at CSI Airport, Mumbai, based on a Lookout Notice. His custody was handed over to the NCB Office. The statement of the applicant was recorded on 19th July, 2017. He was placed under arrest on 20th July, 2017. On completion of investigation, complaint has been filed and the case is registered as NDPS Special Case

No.12 of 2018, which is pending before the Special Court for NDPS, Thane.

3 Applicant preferred an application for bail before the Special Court, which was rejected by order dated 23rd March, 2018.

4 Learned Senior Advocate Mr. Mundargi submitted that there is no cogent evidence to show the involvement of the applicant in the said crime. It is submitted that except the statement under Section 67 of NDPS Act, the prosecution has not been able to bring on record any other material to substantiate his involvement. Merely on the basis of the statement recorded under Section 67 of the NDPS Act of applicant and the co-accused he cannot be subjected to custody. It is submitted that the trial Court has granted bail to all the persons who were not in physical possession of the contraband though their statements were recorded under Section 67 of NDPS Act alleging their handling of the contraband either in the past or were going to handle in the near future or were connected in financial transactions. Considering the fact that there was no evidence to corroborate the statement, they were granted bail. Learned

counsel further relied upon the orders granting bail passed by the Special Court in favour of Lalit @ Laduram Kumavat (accusedno.3), Chandramani Pandey (accused no.4), Parag Mehta (Accused no.7), Krishnambuj Kumar and Rajan Rajput. It is submitted that the prosecution case is that the statement of the accused Parag Mehta indicate that he was purchasing Mephedrone from applicant and that he had arranged delivery of the contraband. Other accused has been granted bail and there was no impediment in granting bail to the applicant. It is further submitted that in the present case, the investigating officer and the complainant is the same, which is not permissible in law. Learned counsel for the applicant relied upon several decisions in support of granting o bail, which are as follows:

- (1) *Bheru Singh Vs. State of Punjab*¹;**
- (2) *Akshat Anant, Presently at Central Jail, Colvale, thr. Abhinaw Kumar Vs. State of Goa, Thr. Anti Narcotic Cell, Panaji & Anr.*²;**
- (3) *Mohan Lal Vs. State of Punjab*³;**
- (4) *Bineesh A.N. & Ors. Vs.The Sub Inspector of Police, Iritty Police Station, Kannur & Anr.*⁴;**

1 SLP (Cri) No(S)5436 of 2012

2 Cri. Application (Bail) No.306 of 2018, delivered on 31st October, 2018

3 2018 AIR (SC) 3853

4 Cri. MC No.6762 of 2018, 11th October, 2018

- (5) *Union of India Vs. Bal Mukund & Ors.*⁵;**
(6) *Union of India Vs. Jarooparam*⁶;
(7) *Annabelle Analista Malibago Vs. DRI*⁷

5 Learned counsel for respondent no.1, however, submitted that, the statement of the applicant was recorded under Section 67 of NDPS Act, wherein he admitted the role played by him in the crime. It is submitted that the statement of Parag Mehta is also recoded during the process of investigation, which also corroborate the involvement of the applicant in the crime. It is submitted that the version of the applicant and the co-accused spelt out in the statement recorded under Section 67 of NDPS Act, is corroborated by the other evidence. Learned counsel drew my attention to the contents of the complaint filed by the prosecution which is based on the evidence collected during the course of investigation. It is submitted that other than the aforesaid statements, the witnesses whose statements recorded during the course of investigation also show the complicity of the applicant in the said crime. The evidence on record also indicate that the applicant was acquainted with accused Parag Mehta. My attention was drawn to paragraph 42 of the complaint. It refers to several documents recovered from

5 (2009) 12 SCC 161

6 2018(3) Scale 628

7 CRL A. 177/2016, decided on 25.10.2018

the possession of the accused Parag Mehta, which includes documents belonging to the applicant. It is therefore submitted that the evidence disclose that Parag Mehta and applicant were known to each other which supports the contents of the statement of Parag Mehta as well as the applicant. It is further submitted that on the basis of intelligence and the directions of the Zonal Director, NCB, team of officers and personnel called two panchas near MIDC Mahad on 28th February, 2015 and they conducted raid at M/s.Rohan Chemicals Pvt. Ltd. During the said raid, the blue coloured drums containing white or yellow coloured powder was seized. The NCB team also proceeded towards the laboratory located on the first floor, wherein two containers bearing label 4-Methylpropiophenone and Potassium Dichromate were found alongwith the unlabelled containers containing liquid. The laboratory also contained 21 transparent polythene sacks containing white/yellow powder. The front of the laboratory contained a liquide in GLR-3 Equipments. Thereafter, while alighting the stairs from the laboratory, another room was located behind the weighing machine which contained one small sack and two bigger sacks. The small sack contained white crystalline powder and the bigger sack contained yellowish powder. Samples were drawn from all the above mentioned chemicals, separately

and individually, in separate plastic pouches/bottles. The plastic pouches were placed in brown colour envelopes and were sealed. It is submitted that there is sufficient evidence on record to indicate that the applicant is involved in the transaction. Learned counsel also relied upon the statements of witnesses reflected in paragraphs 53 and 54 of the complaint. The prosecution relied upon the statement of Bhaskar Thoke, who worked in the factory viz. M/s.Rohan Chemicals. Reliance is also placed on the statement of Rahul Kale which was recorded on 9th March, 2015. It is submitted that in the statement of Bhaskar Thoke, he has stated that 4-Methylpropiofenone found in the laboratory is used for production of Mephedrone. He further revealed that many unlabelled drums containing chemicals which were transported in M/s.Rohan Chemicals Pvt. Ltd. and that they were used by the production department. He suspected a person by name Pravin Kadam, who is close to Rohan Gawans and who used to take material from the factory. It is submitted that the statement of Rahul Kale and Vinod Parab also reiterates the version of the aforesaid matter. It is, therefore, submitted that there is sufficient evidence against the applicant. Under Section 37 of the NDPS Act there is an embargo in granting bail for the offences under the NDPS Act. In the light of the evidence

collected by the respondent during the course of investigation, case for grant of bail is not made out. It is also submitted that the applicant was absconding for a period of two years.

6 Learned counsel for the applicant submitted that a separate case has been registered against the father of the applicant Prabhakar Gawas, in respect to the seizure dated 25th February, 2015, which is pending the competent Court and it is not the subject matter of the present case. It was also pointed out that the statement of Bhaskar Thoke and other witnesses relied upon by the prosecution does not describe the role of the applicant. They have referred to the supervision of the factory of M/s.Rohan Chemicals being done by Prabhakar Gawas. It also appears that Pravin Kadam is absconding and could not be arrested. The applicant has been arrested on 19th July, 2017. On completion of investigation the complaint has been filed. The case of the prosecution is primarily based on the statement of the applicant and the co-accused Parag Mehta, which were recorded under Section 67 of the NDPS Act. As stated above, the search was conducted at factory M/s.Rohan Chemicals on 25th February, 2015, separate case has been registered against the father of the applicant. In the statement of the applicant recorded under

Section 67 of the NDPS Act, it is not stated that Pravin Kadam had collected the contraband from the factory at M/s.Rohan Chemicals and the same has been handed over to him. Learned counsel for the applicant also draw my attention to the fact that one of the accused Krishanmbuj Kumar was also arrested after a period of one year on issuance of the LOC at the Airport and he has been granted bail by the Special Court. The recovery of documents from the residence of Parag Mehta allegedly contained some documents, no adverse inference could be drawn. There is no recovery of contraband from applicant. Other accused from whom there was no recovery and were arrested on the basis of the statements recorded under Section 67 of the NDPS Act, are granted bail by the Special Court. It is noted that the accused no.3 Lalit @ Laduram Kumavat (accused no.3) who has alleged to have visited alongwith accused no.2 to the premises where 5 kgs. of Mephedrone was found, was granted bail by order dated 19th May, 2015. Chandramani Pandey, i.e. accused no.4 was alleged to have arrived at premises where 5 kgs. of Mephedrone was seized for collection of 2 kgs of Mephedrone was granted bail by order dated 19th May, 2015. Accused No.7 Parag Mehta who was arrested and alleged to have supplied 25 Kgs. of Mephedrone to Jogabhai (accused no.8) and Nanji Ram (accused no.9) and the

same was seized in the process of being handed over to accused no.5 and accused no.6 was granted bail by the Special Court. The statement of accused no.7 indicate that he was purchasing Mephedrone from the applicant and selling the same to the other accused. According to the prosecution on 25th May, 2015, accused no.7 had received a call from accused no.9, for demand of 25 kgs. of Mephedrone, which he intimated to the applicant. According to him, on 26th February, 2015, the applicant brought the delivery of of 25 kgs. Mephedrone through his driver. Parag Mehta (Accused no.7) was granted bail vide order dated 26th October, 2015. Similarly, accused Krishanmbuj Kumar was apprehended on LOC at Kolkata Airport, who is alleged to have financial dealings in respect of contraband drug with accused no.2 Pramod Kumar Pandey was granted bail on 18th April, 2016. Accused no.5 Rajan Rajput, who is alleged to have transacted with accused nos.5 and 6 for purchase of contraband drugs allegedly seized in the present case was also granted bail on 3rd January, 2017. In the light of the aforesaid circumstances the rigors of Section 37 of the NDPS Act, would not cause any impediment in granting bail to the applicant. Hence, case for grant of bail is made out.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.924 of 2018, is allowed;
- (ii) Applicant is directed to be released on bail in connection with NDPS Special Case No.12 of 2018, pending before the Court of NDPS Special Court, Thane, on furnishing P.R. Bond in the sum of Rs.2,00,000/-, with one or more sureties in the like amount;
- (iii) Applicant shall not leave the jurisdiction of Thane and Mumbai without permission of the trial Court;
- (iii) Applicant shall report the investigating officer at NCB, Mumbai Zonal Unit twice a month on 2nd and 4th Saturday of the month between 11:00 a.m. to 1:00 p.m., till framing of charge;

- (iv) Applicant shall attend the trial Court on the date of hearing of the case regularly, unless exempted by the Court;
- (v) Applicant shall furnish the details of his residential address to NCB, Mumbai Zonal Unit;
- (vi) Bail Application No.924 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)