IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1833 OF 2018

Rohit Dhanpal Nejkar ...Applicant

Versus

Intelligence Officer and anr. ...Respondents

Mr. Mandaar Goswami, a/w Taraq Sayed, for the Applicant.
Mr. Francis Saldhana, for DRI.
Ms. A. A. Takalkar, APP for the State.

CORAM: PRAKASH D. NAIK, J
DATED: 5th December, 2018

PC:-

1. The applicant was arrested in connection with case registered by DRI, Mumbai vide DRI F. No.DRI/MZU/C/INT-117/2016 for alleged offences punishable under Section 8(c), 22(C), 23(C), 27(A) and 29 of Narcotics Drugs and Psychotropic Substances Act, 1985 ('NDPS Act', for short).

2. The prosecution case is that information /intelligence dated 21st November, 2016 was conveyed by the officer of the Directorate of Revenue Intelligence Ludhiana to DRI, Mumbai, informing that huge quantity of Psychotropic Substances viz. Alprazolm, Zoldipam, Diazepam etc. in addition to Tramadol, soma etc. covered under the NDPS Act was being illegally exported by Manjeet Singh Chilotra, a resident of Mira Road, Mumbai. The residential and office cum godown premises of accused no.1 Manjeet was searched and examined by respondent officers from 21st November, 2016 to 23rd November,

2016 resulting into seizure of psychotropic substances having quantity 16,72,238 tablets. It is alleged that on 17th April, 2017 acting on the information provided by DRI, MZU, a team of officers searched the office premises of the applicant under the provisions of NDPS Act. Further search was conducted at the residential premises. The applicant was arrested on 21st April, 2017 at Mumbai. It is alleged that the statement of applicant has been recorded under Section 67 of NDPS Act. According to prosecution the applicant has knowingly connived, aided abetted and involved himself in the illegal export of psychotropic substances. In his statement he has admitted that he has supplied psychotropic substance to accused no.1 and that he was supplying the same along with accused no.8. On completing investigation the complaint had been filed before the Competent Court.

3. The learned Counsel for the applicant submitted that the applicant has been falsely implicated in this case. There is no cogent evidence to establish the complicity of the applicant in the crime. The prosecution is relying upon the statement of the co-accused recorded under Section 67 of the NDPS Act as well as the statement of the applicant accused which is not corroborated by any evidence. The statement is retracted. The applicant cannot be incarcerated in custody only on the basis of such statement without any corroboration. The applicant is prosecuted in pursuance to the intelligence note dated 21st November, 2016 issued by DRI, Ludhiana, Chandigad and same was forwarded to DRI Mumbai for co-ordinated searches and accordingly complaint was filed on 22nd August, 2017. There is no evidence on record which connects the applicant to

the alleged seizure dated 21rd November, 2016. There is no evidence on record that the applicant had supplied any contraband medicines. Apart from his statement the prosecution is relying upon the seizure of notebook and the extract of the bank account statement of the applicant showing some of the deposits from Web Solutions and Acme Computers belonging to Manjit Singh. It is submitted that the notebook under question mentions about the tablet "Sildenafil" which is similar to Viagra and does not fall under the NDPS Act and also is not a part of the medicines seized from Manjit Sing and same cannot be considered as evidence to connect the applicant to the alleged seizure dated 21st November, 2016. Deposits from DM Web Solutions into the bank account of the applicant are on 11th November, 2014 and prior to 2014 and therefore the same cannot connect the applicant to the seizure dated 21st November, 2016. The statement does not state about supplying any medicine after 2014. It is further submitted that according to the prosecution the intelligence was received by DRI Ludhiana/Chandigarh about the syndicate involved in illegal export of medicines such as Alprazolam, Zolpidem which are covered as psychotropic substances under NDPS Act. On 21st November, 2016 the DRI Ludhiana sent a letter by fax to DRI Mumbai requesting them for co-ordinated searches, as the premises to be searched was under the jurisdiction of Mumbai DRI. The letter was accompanied by the intelligence note dated 21st November, 2016 in pursuance to that search was carried out. It is submitted that the investigation is carried out on the basis of the intelligence note dated 21st November, 2016 annexed to the complaint. There is total non-compliance of Section 42(2) of the NDPS Act. The note was not having any designation, place, date, time or name of the officer or the office etc. and there was no endorsement as to said intelligence note was put up before the superior officer within 72 hours as stipulated under Section 42(2) of the NDPS Act. It is, therefore, submitted that non-compliance of Section 42(2) of the NDPS Act as the officer received the intelligence note did not put up before the superior. After realizing the discrepancy of non-compliance of the said provision the prosecuting agency came up with the case that the original intelligence note was of 19th November, 2016 and not of 21st November, 2016 just to fill up the lacuna of non-compliance of Section 42(2) of the NDPS Act. On 22nd January, 2018 the prosecuting agency had preferred an application to take the document claimed to be an intelligence note dated 19th November, 2016 on record. The said document was not part of the charge-sheet. Thus the applicant is entitled for bail on the ground of non-compliance of Section 42 of the NDPS Act. It is further submitted that in the absence of cogent evidence establishing involvement of the applicant, he cannot be subjected to custody. There is no recovery of any contraband from the applicant. The statement of the co-accused which was relied upon by the prosecution against the applicant was sought to be retracted by the accused as he had filed an application stating that same was recorded under coercion. The statement of Ranjit Tanpure cannot be relied upon to implicate the applicant in the present crime.

4. It is further submitted that the statement of the accused under Section 67 of the NDPS Act by itself is not sufficient to establish the involvement of the applicant. The applicant is working with his father as a owner of a business dealing with

FMCG trading/distributing/stockiest for Kolhapur District with the distributorship of selling the products throughout India. To show the involvement of the applicant in the transaction, the prosecution has not been able to put forth sufficient evidence. The applicant is in custody from the date of arrest. He is permanent resident of the address mentioned in the cause-title of the application. There are no antecedents against him. It is, therefore, submitted that the applicant be released on bail.

5. Per contra, Mr. Saldanha, learned Counsel for the Respondent – DRI vehemently opposed the application for bail. It is submitted that there is strong and cogent evidence against the applicant showing his involvement. There is sufficient compliance of the provisions of NDPS Act. The purported discrepancy pointed out by the accused can not be appreciated at this stage and same may be adjudicated during the trial. The statement of the accused recorded under Section 67 of the NDPS Act shows his involvement in crime. The statement of co-accused also establishes the involvement of the applicant. The said statement is corroborated by additional evidence recovered during the course of investigation. The genuineness of the documents relied by the prosecution is the question which relates to appreciation of evidence and at the stage of bail cannot be appreciated. The respondents have filed their reply opposing application for bail. The learned Counsel for the respondent placed reliance on the contents of the reply. Applicant has admitted in voluntary statement recorded under Section 67 of the NDPS Act that he had supplied psychotropic substances to original accused no.1. The statement was recorded in his hand. In his statement dated 21st April, 2017, it

is admitted that after his business with accused no.1 was reduced he started searching prospective customers through India mart website and he had developed contacts with one Aman Dogra of Dehradun and used to purchase Alprazolam tablets from him. Similarly he used to purchase Zolpediem, Tramado, soma from one Indrajeet Singh from Ludhiana from his firm M/s. Kevin Pharma, who manufactures psychotropic substances in his factory at Roorkee Haridwar District, Uttaranchal. He also stated that he developed contact with one Vikram Gupta, a Roorkee, Uttaranchal based person from whom he used to purchase Zolpedien, who was running a company in the name of Brown and Black at Roorkee, using label to carry a name of "Bullford World". He further stated that he also used to supply psychotropic substances viz. Zolpedium to Jintendra Bansel, a Dehradun Medicines to one Swayam a Hyderabad based person. It is submitted that the applicant has given sufficient details in his statement admitting his involvement in the transactions. The case of the prosecution is apart from statement of the accused and the co-accused, there is evidence to show involvement of applicant. There is recovery of note-book seized from him as well as the bank statements. He has also admitted having received payments by Angadia and supplied the psychotropic substances by courier. The notebook which was seized from his residence contains the evidence to show his involvement in illegal transaction of psychotropic substances to accused no.1. He did not have any licence to supply this psychotropic substances from any government agency. The applicant was aware that accused nos.1 and 8 did not possess any permission or licence for sale, purchase and possessed huge quantity of psychotropic substances and had knowingly aided and abetted the main accused no.1. The applicant in connivance with other accused had knowingly indulged and abetted in commission of crime. Learned Counsel drew my attention to the intelligence note as well as the statement of the applicant and accused recorded under Section 67 of NDPS Act and various other documents which are relied upon by the prosecution.

6. Having heard both sides, I have gone through the documents relied upon by both sides. On completing the investigation the complaint has been filed. The primary contention of the applicant is that there is no legal evidence to connect the applicant in the present crime and except the statement of the applicant and accused recorded under Section 67 of the NDPS Act, there is no evidence to show the complicity of the applicant in the crime. The contention of the applicant is also that there is non-compliance of Section 42 of the NDPS Act. The documents viz. intelligence note dated 19th November, 2016 was produced subsequently to fill up lacuna as it does not form part of the complaint. It is also contended that the prosecution had based its case on the information/intelligence dated 21st November, 2016. Learned Counsel for the respondent, however, pointed out the fact that the letter was faxed on 2nd August, 2017 to DRI Mumbai. It is a genuine document and the appreciation can be done at appropriate stage. The prosecution case is that the applicant is one supplier of the psychotropic substances of applicant no.1. Tablets containing psychotropic substances were recovered during the course of investigation through co-accused having commercial value of Rs.63,90,975/-. The prosecution is strongly relied

upon the notebook seized containing evidence to show the applicant's involvement in the illegal export of psychotropic substances to accused no.1. The prosecution is also relying on the statement of the co-accused Ranjit recorded under Section 67 of the NDPS Act as well as the bank statement.

7. Learned Counsel for the applicant had tendered compilation of the documents viz. documents in support of his submission in the nature of the notebook, statement of co-accused, statement of the accused, intelligence note dated 21st November, 2016 and the application dated 22nd January, 2018 filed by DRI to place original intelligence note dated 19th November, 2016 on record and written notes of arguments. The respondent also tendered further submission. Learned Counsel for the applicant had relied upon the following decisions:

(i) *Surinder Kumar Khanna vs. Intelligence Officer Directorate of Revenue Intillegence reported in 2018 SCC Online SC 757.*

(ii) Karnail Singh vs. State of Haryana reported in (2009) 8 Supreme Court Cases 539.

(iii) A. Nasar Cherukara vs. R. G. Gokhale & ors. in Criminal Appeal No.1057 of 2008 dated October 21, 2010 Bombay High Court.

(iv) Sarija banu @ Janarthani @ Janani & anr. vs. State through Inspector of Police reported in (2004) 12 Supreme Court Cases 266.

(v) Rajaram Kadu, vs. The State of Maharashtra in Bail Application No. 2108 of 2016 dated 13th June, 2017, Bombay High Court.

(vi) Smt. Najma Abdul Shaikh vs. The State of Maharashtra in Criminal Bail Application No. 1311 of 2012 dated October 23, 2012 Bombay High Court.

8. The decisions related to evidentiary value of the statement under Section 67 of the NDPS Act and compliance of Section 42

of the said Act. The decisions also indicate that the question of the applicability of Section 42 can be considered at the stage of the bail. The ratio laid down in the other decision relating to the statement under Section 67 of the NDPS Act indicate that in addition to the statement there has to be some material to support the evidence. There is no debate about the evidentiary value of such statement. However, in the present case it is noted that the prosecution is relying upon the statement of the applicant under Section 67 of the NDPS Act as well as the statement of co-accused nos.1 and 8 recorded under Section 67 of the said Act. In addition to that other material in the form of notebook and the bank statement of the applicant. It is also the case of the prosecution that the contents of the statement of the applicant also clearly establish his connivance and it was a voluntary statement which furnishes details about his involvement and there is no doubt to discard the same at this stage. It is true that there is no recovery of the contraband at the instance of the applicant. The prosecution has also invoked Section 29 of the NDPS Act. The prosecution case is that the applicant had aided accused no.1 in conducting the business of psychotropic substances without any permission or licence. The prosecution is heavily relying upon the bank statement of the applicant which shows that the transaction of lakhs of rupees within a short period or span and the amount that has been received from accused no.1 in his account. The case of the applicant is however that the amount was received for supply of FMCG products. Learned Sessions Judge had dealt with the issue and had rejected the application with an observation that if we consider the list of products referred in the application then that will not certainly product of such a nature which can be purchased by anybody in lacs of rupees. If that was the case of the applicant he would have easily produced documents to show as to which FMCG products were supplied by applicant/accused Manjit Singh Chilotra in such a short span to receive lacks of rupees in his account. In absence of any such documents on record, it is difficult to accept that the said transaction for sale of such products as claimed by the applicant. It was also observed that the decision in Francis Stanley case, which is relied upon by the learned Counsel for the applicant deals with the evidentiary value of statement under Section 67 of NDPS Act. It has been observed therein that the case was being decided on the facts and circumstances of the particular case that should not be considered as precedent by other Court in that respects. The Special Court also observed that during the pendency of several application preferred before the Court, Trial Court had passed order below Exhibit 1 on 9th May, 2018 directing the prosecution to procure all documents in order to come to the conclusion that whether the particular compliance had made or not. Learned Counsel for the applicant has vehemently argued that the information/intelligence dated 19th November, 2018 was brought into picture subsequently and it does not form part of the complaint/charge-sheet. There was no reference to the said documents in the complaint. However, as stated above the document was forwarded on 2nd August, 2017 to DRI Mumbai. Genuineness of document/admissibility etc. are the factors which are to be adjudicated during the trial. This is not the stage to appreciate the evidence. The contention for the applicant therefore cannot be considered for grant of bail. According to prosecution the applicant is one of the supplier of psychotropic substance to accused no.1 and the total quantity of seized tablets containing psychotropic substance in this case from office/godown and office premises of courier companies is 16,91,425 numbers and commercial value of seized tablets is Rs.63,90,975/-. The notebook seized from house search shows the involvement of applicant in illegal export of psychotropic substances through accused no. According to prosecution the applicant used to deal with sale of tablets which is evident from notebook seized at his residence. Allegedly he had contacted accused no.1 on several occasions. Accused no.1 has tendered his personal diary during recording of his statement which contains bank account numbers of applicant. This case relates to export of huge quantity of psychotropic substance viz. Alprazolam, zolpidum, diazepam etc. by accused no.1 and accused no.8 and the applicant had connived with them. The Bank statement of applicant for A/c No.636401500463 of ICICI Bank, Jaisingpur branch disclosed that he had received an amount of Rs.1,77,000/- on 6th August, 2013 from Allied Computers, on 21st August, 2013 an amount of Rs.1,32,000/- from Allied Computers, on 28th August, 2014 an amount of Rs.1,50,000/- from Allied Computers and Rs.1,50,000/- from Allied Computers of accused no.1. He also received amount of Rs.1,50,000 on 5th November, 2014, Rs.2,00,000/- on 11th November, 2014 and Rs.3,00,000/- from M/s. D. M. Web Solutions (from accused no.1). The applicant had transferred huge amount in the account of accused no.8 alleged towards commission for supply of psychotropic substance. The notebook also shows applicant's involvement in illegal export of these psychotropic substance through accused no.1. According to prosecution the applicant has made admissions which are corroborated by accused no.8. Taking into consideration the evidence against the applicant no case for grant of bail is made out. In such circumstances, no case for grant of bail is made out.

9. Hence the following order:

: O r d e r :

(i) Bail Application No.1833 of 2018 is rejected.

(ii) It is clarified that the observation made in this order is *prima facie* for considering the application for bail.

10. Application stands disposed of.

[PRAKASH D. NAIK, J.]