

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.975 OF 2018

Sachin Atmaram Vartak, Age 55 years, R/o.Avighna Bungalow, Sakai Nagar, Umela, Tal.Vasai, Dist.Palghar.	Applicant
versus	
The State of Maharashtra	Respondent

WITH
CRIMINAL APPLICATION NO.767 OF 2018

Sachin Atmaram Vartak, Age 55 years, R/o.Avighna Bungalow, Sakai Nagar, Umela, Tal.Vasai, Dist.Palghar.	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Ashok Mundargi, Senior Advocate, with Mr.Ayaz Khan I/by
Mandar Goswami for applicant.
Mr.S.R.Agarkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 4th February 2019

PC :

1. This is an application for bail in CR No.II-7 of 2016 investigated by Palghar Police Station. The offences were registered under Sections 8(c), 22(c) and 27(c) of Narcotics Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'). The applicant was arrested on 25th May 2016. Investigation is complete and charge sheet is filed.

2. The case of prosecution is that information was received through intelligence by ATS, Ahamedabad which was transmitted to

Superintendent of Police, Palghar and pursuant to that the raid was conducted on 19th May 2016. A farm house situated at Village Gaurpur, Tal.Wada, District Palghar was raided. There was seizure of 560 kgs 148 grams of Methaqualone, psychotropic substance. The statements of arrested accused were recorded. The investigation was conducted. The charge sheet was filed. The applicant had preferred an application for bail before the Sessions Court, which was rejected vide order dated 30th March 2017.

3. Learned counsel for applicant submitted that there is no cogent evidence to show involvement of applicant in the crime. The prosecution is relying on the statements of co-accused. There is no independent evidence to show the complicity of applicant in the crime. There is no recovery of contraband from possession of the applicant. The applicant has been arrested only on the basis of inference. The applicant was not present at the place of seizure at the time of seizure. The applicant is in custody since last two years. The contraband was seized from the farm house owned by Vivek Kubal and the applicant is nowhere concerned with the said farm. The entire prosecution case is based on the statement of the accused recorded in police custody which is not admissible in law. The statement of applicant was recorded under coercion. The statement of Vivek Kubal was recorded on 1st June 2016 and the statement of land owner Giriprasad was recorded on 27th May 2016. There was no basis for arrest of the applicant. There is no corroborative evidence to show the involvement of applicant in the crime. The land owner has given the affidavit to the bank that the property belongs to him and the same was mortgaged in 2013. The presumption u/s 54 of NDPS Act cannot be the basis as the applicant

was not found with any contraband. The applicant cannot be linked with the alleged seizure of contraband. Learned counsel relied upon the letter dated 18th October 2016 forwarded to Palghar Police Station by NKGSB Bank indicating that the loan was sanctioned against mortgage of land at Survey No.197 of Village Gaurpur, Tal.Wada, District Palghar to M/s.Aadishankh Chemicals Private Limited and that the said loan amount has been classified as non performing asset due to non non payment of monthly installments and issued demand notice dated 5th April 2014 under Sarfaesi Act, 2002. It is, therefore, submitted that the said document is contrary to the case of prosecution. The applicant is in custody over a period of about two years and in the absence of any evidence, further detention of the applicant is not called for and he may be granted bail.

4. Learned APP submitted that during the course of investigation statements of several witnesses are recorded which show the involvement of applicant in the crime. The grounds raised by the applicant in support of the application for bail can be agitated during the trial. There is sufficient evidence to show the complicity of applicant in the crime. In view of the embargo under Section 37 of NDPS Act, the applicant is not entitled for bail. Huge quantity of contraband having valued to Rs.27,50,77,650/- was seized during the course of investigation.

5. Having heard both sides I have perused the charge sheet. The information was received on 18th May 2016 by ATS Gujarat which was forwarded to Superintendent of Police, Palghar. Pursuant to that raid was conducted at the subject farm house which lead to

recovery of 550 kgs of Methaqualone. Investigation proceeded. The statements of witnesses were recorded. The evidence collected by respondent indicate that purchase of property from where the raw material was seized, is benami transaction as the property was actually owned by the applicant. There are witnesses who have stated about the frequent visits of applicant to the property from where huge quantity of raw material was seized. The applicant was in touch with co-accused on telephone. Prima facie there is evidence to show the involvement of applicant in the crime. The applicant was closely acquainted with the co-accused. The applicant's claim is that he was an estate agent. However, he had visited the place frequently.

6. The statement of occupant of the premises Smt.Asmita Hadke who was working as care taker was recorded during the course of investigation. She has stated that she was appointed by Vivek Kubal as care taker at the raided premises. She has also stated that no one was residing at the said premises. However, Vivek Kubal and others used to frequently visit the premises. She also noticed raw material which was being brought at the place and some substance was being prepared. She has also stated that the material filled in the bags was being transported from the said premises.

7. The statement of Arjun Hadke recorded on 21st May 2016 also reiterates the version of Smt.Asmita Hadke. He is the husband of Smt.Asmita. The statement of Girimangal Prasad refers to the fact that Mahendra Sawant had brought customer with him for purchasing his property at Gaurapur. He was accompanied by Sanjay Patil who informed the said witness that the property is to be

purchased by Sachin Vartak. There was a meeting between Sachin Vartak (applicant), Sanjay and Mahendra Sawant and the deal of sale of property was finalized for a consideration of Rs.65 lakhs. The applicant had agreed to purchase the said property. The documents in relation to the property were handed over to the advocate of Sachin Vartak. The notice with regards to the sale of property was published through advocate of applicant. The objection was raised by NKGSB Bank. The witness further stated that he had already indicated the purchasers that there is encumbrances on the said property. The Memorandum of Understanding was prepared. The property was agreed to be purchased in the name of Vinod Gupta. The applicant, Mahendra Sawant, Vinod Gupta and two other persons were present at the time of said transaction. The applicant handed over Rs.25.27 lakh by cheque and pay order. The balance amount of Rs.37.39 lakh was handed over by the applicant by cash. The possession of premises was handed over to the purchaser of the property. The witness further stated that the applicant had indicated him that he needs permission to construct bungalow on the said property. The transaction with regards to sale of the property was completed by applicant with the said witness which was purchased in the name of Vinod Gupta.

8. The statement of Sanjay Patil was also recorded during the course of investigation who corroborates the aforesaid version. The statement of Vinod GGupta was recorded on 6th July 2016. He has stated that Vivek Kubal had called him for a meeting with regards to sale of property. He introduced him to the applicant and original owner of the property Mr.Giri Mangalprasad. There was a discussion about sale of the property. Vivek Kubal told him to issue cheques of

Rs.23 lakhs which were issued by him. The cheques were given in the name of Aadishankh Chemicals Private Limited. Mr.Vivek Kubal also showed memorandum of understanding and possession letter and told him to sign on the said document. Mr.Vinod Gupta signed the said document. He also issued five cheques from his bank account in the sum of Rs.23 lakhs. Mr.Vivek Kubal gave him Rs.23 lakh in cash which was deposited by him in his account. The documents were in possession of Mr.Vivek Kubal.

9. The statement of Mahendra Sawant also corroborates the prosecution case showing involvement of the applicant. The statement of advocate Bhoir was recorded on 30th May 2016 in which he has stated that in 2010 he was approached by one party and it was stated that he is Sachin Vartak and he intends to purchase the property at Gaurpur and told him to publish notice in the newspaper which was published on 21st October 2010. The memorandum of understanding executed between the parties referred to hereinabove, is part of the charge sheet. It is signed by Vinod Gupta in the presence of Mahendra Sawant. The statement of Rajesh Patne refers to the purchase of material by accused. He has stated that police has visited his shop and showed the arrested accused to him who had disclosed that they had purchased the laboratory material from his shop. The witness stated that the applicant and his associate had visited his shop and had purchased ventilator three neck flask, dean and stark appratar, libing condensor, heating mental, stand, tubing etc. for Rs.1,46,717/-. The receipt was prepared in the name of applicant. Other persons namely Vivek Kubal and Shivprasad Singh also visited his shop and they had also purchased similar material. The statement of Rajan Sawant recorded on 15th October 2016 also

indicate the purchase of construction material for constructing bungalow at the farm house by the accused. Thus, there is sufficient material to show the involvement of applicant in the crime. Hence, in the light of provisions of Section 37 of NDPS Act, no case for grant of bail is made out. Hence, Criminal Bail Application No.975 of 2018 is required to be rejected. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.975 of 2018 is rejected;
- (ii) Criminal Application No.767 of 2019 stands disposed off.

(PRAKASH D. NAIK, J.)

MST