

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

BAIL APPLICATION NO.626 OF 2019

Mukesh Krishna Taakle ... Applicant
Vs
The State of Maharashtra ... Respondents
...

Mr. Ayaz Khan for the Applicant.
Mr. S.R.Agarkar , APP for the Respondent-State.
PI Gajanan Rajaram Sargar attached to Amboli Police
Station, Mumbai present.

CORAM : SANDEEP K. SHINDE J.
DATE : 24th FEBRUARY, 2020

P.C. :

Heard.

2. Applicant seeks his enlargement on bail in
Crime No.11 of 2018 registered with Amboli Police
Station for the offences punishable under Sections 8(c),
22(c) and 29 of the Narcotics Drugs and Other
Psychotropic Substances Act, 1985 ('**NDPS**' in short).
The learned counsel for the applicant primarily states
that material irregularities and contradictions in

relation to receipt of information, search of the applicant makes not only the secret information but entire search and seizure suspectable. It is, therefore, submitted that material irregularities and contradictions that surfaced in the course of investigation are sufficient grounds to hold that applicant is not guilty of the offence and, therefore, pending trial, the present bail is sought.

3. I have perused the final report.

4. It is prosecution's case that on 31st January, 2018, PSI Daya Nayak attached to Amboli Police Station had received information at 0050 hours that on 31st January, 2018, two persons were coming to sell Mephedrone to their customers behind Aviva Hospital, Lokhandwala Complex. PSI Daya Nayak informed PI Gajanan Sargar about the said information which was then noted in the station diary by PI Gajanan Sargar

and was thereafter conveyed to the ACP and the DCP of Zone-IX. These superior officers were directed to conduct raid under the supervision of Amboli Police Station. PI Sargar, thereafter made copies of the station diary entry and forwarded the same to the superior officers through Police Constable P.C.Bhat. Panchas were called at 0215 hours and thereafter pre-trap panchanama was prepared in police station at 0325 hours and the raiding party members had reached the spot at 0330 hours. At 0400 hours, the raiding party noticed two persons getting down from a white coloured Maruti Ertiga car, both of whom were carrying a plastic bag in their hand and were thereafter apprehended being the same persons regarding whom the information was received. They were apprised of their rights in Hindi under Section 50 of the NDPS Act. Whereupon the personal search of the suspects, the officers recovered light yellow coloured powder alleged to be Mephedrone wherein each of the accused was

found with 1 kg. of Mephedrone. Thereupon, two samples of 2 gms each were drawn from the quantity recovered from the accused. The said samples and bulk quantities were seized and the panchanama of all these events was prepared and completed at 0600 hours on 31st January, 2018. Thereafter, FIR came to be registered at Amboli Police Station by PI Sanjay Pawar for the offences punishable under NDPS Act against the applicant and co-accused.

5. It is prosecution's case that memorandum of panchanama was drawn at the instance of co-accused on 31st January, 2018 between 0900 hours to 1200 hours where the officer recovered 11.42 kgs of Mephedrone from his residential premises.

6. At the outset, the learned counsel for the applicant submits, this applicant is not at all concerned with subsequent recovery made from the residential

premises of the co-accused.

7. The learned counsel for the applicant has taken me through the statements of Mr. Daya Nayak recorded on 3rd February, 2018 wherein he had stated that on 31st January, 2018 at 00.10 hours, he had received the secret information about an alleged likely sale/transaction of Mephedrone by two persons at the place near Lokhandwala Complex. Soon thereafter, Mr. Nayak brought this information to the notice of Sr.P.I. Sargar, who had then, reduced this information into writing and forwarded the copies thereof to the Senior Officers. Mr. Daya Nayak had further stated that at 01.45 hours, information was forwarded to the superior officers through Constable Bhat and PI Sargar sent constable Jamadar to summon two independent panch witnesses. At 2.30 a.m. constable Jamadar came back to the police station with two panchas, whose names were Vijay Nadar and Alex Mirinda.

8. First material irregularity and contradiction vis-a-vis receipt of secret information has been pointed out by the learned counsel for the applicant by making reference to station diary and submitted that this entry was made at 00.50 hours wherein complete description of two persons had been recorded to be narrated, which included their proximate age, height and the clothes on their person. Therefore, it is submitted that the information received by Daya Nayak was only in respect of two persons, who were likely to come at Lokhandwala Complex and beyond that there was no detailed description as far as the present applicants, in particular, are concerned which ultimately points that the prosecution has not explained the source of this vital particulars/description of the two persons and in absence thereto, it makes the said secret information suspectable.

9. Nextly, he has pointed out that raiding party

had used two private vehicles for conducting the raid bearing numbers MH-02 BD 9885 and MH 43 V 2323. It appears from the complaint that at 3.30 am, these two vehicles were hired by the raiding party to reach the place where the suspects were to come. Prosecution has recorded the statements of owners of these two vehicles which shows that owner of vehicle bearing number MH-02 BD 9885 had driven this vehicle to the police station on 31st January, 2018 at 23.45 pm. This runs contrary to the prosecution story in-as-much as, as per the complaint, the raiding party had travelled in these two vehicles on 31st January, 2018 at 3.30 hours and had subsequently concluded the post-trap panchanama at 6 am. However, the owner of one of the cars had stated that he had driven the said vehicle to the police station on 31st January, 2018 at 11.45 pm. This contradiction and/or irregularity has also not been explained by the prosecution at all.

10. Furthermore, the evidence shows, pre-trap panchanama was drawn in the police station on 31st January, 2018, which had commenced on 02.25 hours and concluded at 3.24 hours and thereafter the raiding party had proceeded to the spot of the alleged transaction in two private vehicles as stated hereinabove and had thereafter concluded the post-trap panchanama at 6 a.m. on 31st January, 2018. I have perused pre-trap and post-trap panchanama. ON the backdrop of the facts, it may be stated, the panchnama shows that both the panchas Vijay Nadar and Alex Mirinda were present in the police station at 00.50 hours on 31st January, 2018 which is contrary to the complaint of Sanjay Bhiwa Pawar whose complaint suggests contable Jamadar was sent at 01.40 hours to summon two independent panchas and it further appears panchas came to the police station at 2.15 hours. However, pre-trap panchanama shows, panchas were present in the police station at 00.50 hours. It

may also be stated that this contradiction vis-a-vis presence of panchas in the police station has not been explained by the prosecution at all.

11. Furthermore, it may be stated that complainant in his complaint had stated that on 31st January, 2018, he was informed by Daya Nayak at 00.50 hours about the secret information which he had received. If that is the time considered, then the presence of panchas at the police station at the same time, i.e., at 00.50 hours has not been explained by the prosecution as it has posed a material contradiction in the investigation.

12. The learned counsel for the applicant has placed on record material to show that the two panchas in the present case are professional panchas and in support thereof has placed on record panchanama dated 31st December, 2017 drawn in

Crime No.136 of 2017 of the same police station in the recovery panchnama under NDPS Act. The contents of the panchanama drawn in this crime are verbatim copies of the pre- trap and post-trap panchanama in C.R. No. 136/2017. Besides, it appears Chandrashekhar Nadar, who was also a panch in Crime No.79 of 2017 registered with Amboli Police Station, the relevant documents of which have been placed on record by the applicant.

13. Though the prosecution has filed an affidavit of Gajanan Sargar and made an attempt to explain discrepancies and contradictions as pointed out by the learned counsel for the applicant, however, the same have not been explained except stating that mistakes were committed inadvertently. In my view, not only were contradictions and the inconsistencies brought on record by the applicant but prima-facie, evidence suggests certain improvements were also made, as can

be seen from the diary entry about secret information received by PI Daya Nayak. It may be noted that Daya Nayak, who had received secret information neither disclosed particulars of suspected persons to PI Sargar nor did he reduce the said information into writing; however, the diary entry gave the particulars like height of these two suspects and the clothes worn by them. Evidence also suggests, panchas were habitual and professional as is evident from the text of the panchanama drawn in Crime Number drawn in the Crime No.136 of 2017 wherein Vijay Nadkar was also a panch witness. Additionally, pre-trap panchanama also shows, both the panchas were present in the police station on 31st January, 2018 at 00.50 hours whereas complaint shows, at 1.40 am, constable Jamadar was deputed to summon panchas. These contradictions have not been explained by the prosecution. Furthermore, as it appears from the panchanama that two private vehicles were used by the raiding party to

reach at the spot which were owned by one Mr. Dhangar and Mr. Asif Afsar. Their statements were recorded. Owners of the vehicles had stated that they drove vehicles to the police station on 31st January, 2018 at 23.45 hours whereas pre-trap panchanama and post-trap panchanama show, raiding party had used these vehicles on 31st January, 2018 in the morning at 3.30 a.m. and post-trap panchanama was concluded at 6 a.m. These material contradictions in relation to time has not been explained adequately.

14. A cumulative effect of these material contradictions and one of the panchas being professional/habitual renders trap suspectable as stated herein above. Though the opportunity was given to the prosecution to explain these contradictions, it may also be stated that some mistakes were committed once again by the prosecution in the affidavit tendered by them in an attempt to explain

contradictions.

15. Thus, in view of the above facts, these unexplained contradictions prima-facie renders the case of the trap and seizure being suspectable. Therefore, in my view, there are reasonable grounds for believing that applicant is not guilty of an offence for which he is to be tried. It may also be noted that the prosecution has not brought on record criminal antecedents against present applicant and thus, prima-facie, I am of the view that the applicant is not likely to commit any offence if released on bail.

16. In view of the facts and for the reasons stated hereinabove, application is allowed. Hence, the following order:

ORDER

(i) The applicant be enlarged on bail in Crime No.11 of 2018 registered with Amboli police station, on executing PR Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount;

(ii) The applicant shall attend the concerned Police Station once in a month on the second Monday of each month commencing from February, 2020 from 10 am. to 1 noon till the charge is framed;

(iii) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Trial Court ;

(iv) The applicant shall not leave India without first obtaining permission of the Trial Court.

(v) He shall deposit his passport with the Investigating Officer within a week from the date of his release on bail;

(vi) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

17. The application is accordingly allowed and disposed of.

18. It is made clear that observations made hereinabove be construed as expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)