

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

CRIMINAL BAIL APPLICATION NO. 3792 OF 2021

Kareem Ahsanali Dhanani

...

APPLICANT
(Accused No.5)

Versus

The State of Maharashtra
and Another.

...

RESPONDENTS

WITH

CRIMINAL BAIL APPLICATION NO. 3636 OF 2021

Imran Haroon Ansari

...

APPLICANT

Versus

Union of India
(Narcotics Control Bureau)
and Another.

...

RESPONDENTS

Mr. Ayaz Khan, Advocate for the Applicant in Bail Application No.3792/2021.

Ms. Sonal Parab a/w Mr. P. K. Sangharajka i/b Rajiv Sawant & Associates for the Applicant in Bail Application No.3636/2021.

Ms. A. A. Takalkar, APP for the Respondent/State in Bail Application No.3792/2021.

Mr. M. G. Patil, APP for Respondent/State in Bail Application No.3636/2021.

Mr. Anil Singh, ASG a/w Aditya Thakkar a/w Shreeram Shirsat a/w Ms. Smita Thackur a/w Mr. Pranav Thackur a/w Mr. amandeep Singh for Respondent – NCB.

CORAM : NITIN W. SAMBRE, J.
DATE : DECEMBER 20, 2021.

P. C. :

. Both the Applicants are apprehended on 31st August, 2021 in Crime No. NCB/MZU/CR-82/2021 registered with Respondent – Narcotics Control Bureau, Mumbai for the offence punishable under Sections 8(c) read with Sections 27, 28 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act').

2. The case of the prosecution is, on 28/8/2021 Accused No.1 Ajay Raju Singh was apprehended in the aforesaid crime. Said Ajay Singh was found to be in possession of commercial quantity of contraband and during interrogation revealed the name of Accused Sam, from whose custody commercial quantity of contraband came to be seized. During investigation names of both the Applicants cropped up as consumers of the narcotic substance, resulting into their apprehension in the aforesaid crime.

3. The learned Counsel for the Applicants, relying on the provisions of Section 67 of the NDPS Act and the material available, would

urge that there is no recovery from the Applicants but for the statement of co-accused and also that of the Applicant recorded under Section 67 of the NDPS Act. He would claim that apart from above, only Whatsapp chat extracted from the mobile of the Applicant is relied on. As the offence is punishable only for the period of maximum one year, the Applicants deserve to be released.

4. While countering these submissions, learned ASG has relied on the statements of both these Applicants recorded under Section 67 of the NDPS Act. According to the learned APP the Applicants are named in the statements of co-accused Ajay Singh and Sam. He would further claim that the complicity of the involvement of the Applicants in the offence can be *prima facie* inferred from the material collected during investigation. He has prayed for rejection, as the investigation is still going on.

5. Considered rival submissions.

6. What can be noticed is, from the custody of the Applicants, no incriminating material was seized, but for the Whatsapp chat from mobile

and the statements of co-accused recorded under Section 67 of the NDPS Act.

7. Though the statement recorded under Section 67 of the NDPS Act can be taken into account for the purpose of investigation, the said statement will not bind the Applicant or any other accused and vice versa. As such, the statement of co-accused recorded under Section 67 of the NDPS Act and also that of Applicant will be of hardly any significance to continue their detention. Apart from above, but for Whatsapp chat, there is no material available on record to infer the *prima facie* involvement of the Applicants in a serious offence which is punishable with more than one year.

8. Support can be drawn from the Judgment delivered by the Hon'ble Apex Court in the matter of ***Tofan Singh V/s State of Tamil Nadu*** delivered in Criminal Appeal No.152/2012, decided on 29/10/2020.

9. Apart from above, I am informed that there are no criminal antecedents and both the Applicants have roots in the society as such are available for facing prosecution. That being so, both the Applications are allowed. Hence, the following order.

ORDER

The Applicants, viz – Kareem Ahsanali Dhanani and Imran Haroon Ansari are directed to be released on bail in Crime No. NCB/MZU/CR-82/2021 registered with the Respondent – Narcotic Control Bureau, Mumbai for the offence punishable under Sections Sections 8(c) read with Sections 27, 28 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 on the following conditions :-

- (A) Each of the Applicants/Accused shall execute PR Bond of Rs.1.00 Lakh with one or more sureties in the like amount.
- (B) Applicants/Accused shall not indulge in any activity similar to the activities on the basis of which the said crime stands registered against them for offences under the NDPS Act.
- (C) Applicants/Accused shall not try to establish communication with co-accused or any other person involved directly or indirectly in similar activities or make any call to any person indulging in similar activities as alleged against them, through any mode of communication.
- (D) Applicants/Accused shall not undertake any action which is prejudicial to the proceedings before the learned Special Court (established under the NDPS Act).

- (E) Applicants/Accused neither personally or through any one make any attempt to influence witnesses nor tamper with the evidence.
- (F) Applicants/Accused shall surrender their passport before the Special Court immediately.
- (G) Applicants/Accused shall not make any statement regarding the aforesaid proceedings pending before the Special Court in any form of media i.e. print media, electronic media etc. including social media.
- (H) Applicants/Accused shall not leave the country without prior permission from the Special Judge for NDPS at Greater Mumbai.
- (I) If the Applicants/Accused have to go out of Greater Mumbai, they shall inform the Investigating Officer; and shall give their itinerary to the Investigating Officer.
- (J) Applicants/Accused shall attend the NCB Mumbai office on each Friday between 11.00 a.m. to 2.00 p.m. to mark their presence.
- (K) Applicants/Accused shall attend all the dates in the Court unless prevented by any reasonable cause.
- (L) Applicants/Accused shall join the investigation as and when called upon to do so before the authorities of NCB.

- (M) Once the trial begins, the Applicants/Accused shall not in any manner try to delay the trial.
- (N) If the Applicants/Accused violate any of these terms, NCB shall be entitled to straightway apply to the Special Judge/Court for cancellation of their bail.

10. Both the Applications are accordingly allowed and disposed of.

11. As a consequence, pending Interim Applications, if any, taken out therein are also disposed of.

[NITIN W. SAMBRE, J.]

bgp