

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 749 OF 2021

Wazhal Qamer Abdul Wafa Chaudhary .. Applicant
@ Pappu Chaudhary

Versus

D.R.I. and anr. .. Respondents

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Mr. Taraq Sayed i/b Mr. Advait Tamhankar for the applicant.
Ms. Ruju Thakker for Respondent No.1.

CORAM: BHARATI DANGRE, J.
DATED : 4th OCTOBER, 2022

P.C:-

1. The applicant came to be arrested on 20/03/2017 in-connection with alleged seizure of Mephedrone effected on 19/03/2017. He was arrested by D.R.I Mumbai Zonal Unit and remanded to judicial custody, and till date he remain incarcerated, awaiting his trial.
2. The case of the prosecution is that specific intelligence was gathered by the D.R.I, according to which one Bhanudas More @ Bhavesh Patil was engaged in manufacturing and trafficking of Mephedrone, a psychotropic substance. The intelligence further provided that one Rauff Lulania had procured raw material as well as plant and machinery for illicit manufacture of Mephedrone and one Manish Serasia was supervising its manufacturing. The intelligence information was, that Mr. Wazhal Chaudhary, applicant was the main buyer as well as financier of illicitly manufactured Mephedrone by Bhanudas More and engaged himself in its sale.

Accordingly a raid was conducted at the factory premises of Rainbow Paints, Palghar Industrial Co-operative Estate Ltd and a consignment of Mephedrone was seized. In connection with the said seizure residential premises of the applicant located in Virar Dist. Palghar was also searched. The search resulted in recovery of alleged Ganja weighing about 151 grams and 12 grams of seeds. Since the key of one of the vehicle was found, it led the team to the car, in which a white coloured zip lock polythene bag containing 5 lumps of substance purported to be Ganja was found. On being seized, it was weighing 279 grams. The said substance was seized by the officers of D.R.I. and on the applicant being taken to their office, his statement under section 67 of the NDPS Act was recorded.

3. The proceedings under section 52-A of the NDPS was carried out before the Learned Magistrate on 1/05/2017 and the samples were forwarded for Chemical Analysis and it was reported that the alleged contraband seized from the applicant was Charas. The complaint thus charge the applicant for committing an offence punishable under section 29 read with section 8(C), 22 (C), 25, 27(A) , 28 and 29 of NDPS Act.

4. Heard the learned counsel for the applicant Mr. Taraq Sayed, who would assertively submit that there is no recovery of commercial quantity of contraband from the applicant and what is seized from him is Charas, which is of an intermediate quantity. He would submit that merely because commercial quantity is seized from accused no.1 Bhanudas More, the applicant who is charged as accused no.2, cannot take the same charge for being in possession of commercial quantity. Submitting that only because the prosecution allege that some of the

contraband seized from More's house belong to the applicant and the allegation that the applicant was going to sale the illegally manufactured Mephedrone in Nepal is a sketchy evidence, which in no way can secure conviction of the applicant. Apart from this the long incarceration of the applicant for 5 years has also been pressed into service.

5. Per contra the learned counsel Ms. Thakker appearing for DRI would submit that, when the whole case of the prosecution is examined, commercial quantity has been seized in the raid and the applicant has a connection to the seizure from the accused no.1, who is a manufacturer and supplier of Mephedrone. She would submit that the applicant is the main buyer and financier and from him 12 grams of Ganja seeds and 150 grams of Ganja is recovered along with 5 lumps in form of 279 grams, which is seized from his vehicle. She would submit that the applicant was going to sale the illegal manufactured Mephedrone in Nepal at the rate of Rs. 1.20 lacs to 1.25 lacs per kg and pay the sum to Bhanudas.

The learned counsel would invite my attention to the relevant portion of the complaint, which has been filed by the DRI, and would also place reliance upon the statement of the accused persons recorded under section 67 of NDPS Act. Referring to the statement of one Ajay Deka, who was working with M/s. Kedar Jannani Chemplast Pvt. Ltd, as a helper and assisting in mixing a powder, who subsequently worked with M/s Rainbow Paints has stated that he was employed as a helper, and he was not aware of the actual identity of the finished product, but he used to prepare the product by following the process as per instructions of Bhanudas More and

Yuvraj Chaudhary. The learned counsel for the DRI has invited my attention to the Call Data Record (CDR) of mobile phone used by accused no.1 Bhanudas More and the present applicant as well as the co-accused which has established a pattern. She has placed reliance upon the portion of the complaint, which clearly demonstrated that the applicant was in touch with Bhanudas More and the ingress and egress of the phone calls is highlighted in the following manner:

Wajahul Qamer Choudhary @ Pappu Choudhary made 147 calls to Bhanudas More during the period from 01/06/2016 to 14/03/2017	Rauff Lulania made 94 calls to Bhanudas More during the period from 02/06/2016 to 11/12/2016	Manish Serasia @Rawal made one call on 16/12/2016 to Bhanudas More
	Bhanudas More	
Wajahul Qamer Choudhary @ Pappu Choudhary received 183 calls from Bhanudas More during the period from 02/06/2016 to 14/03/2017.	Rauf Lulania received 96 calls from Bhanudas More during the period from 02/06/2016 to 02/03/2017.	Manish Serasia received one call from Bhanudas More on 04/12/2016.

6. She would submit that the accused no.1 to 4 are responsible for commission of the offence of acquiring, manufacturing, possessing, storing, transportation of Psychotropic substance and Bhanudas is a known drug trafficker. As per as the present applicant is concerned, the submission is that the applicant in past was also involved in drug trafficking and was part of the conspiracy of acquiring, manufacturing, storing, transportation of the psychotropic substance

and thus he has committed the offence under section 22 r/w section 8 C and 25 of the NDPS Act.

7. On perusal of the charge-sheet, it can be seen that accused no.1 is alleged to be the manufacturer of the contraband in the factory and 238 kgs of Mephedrone was traced from the slurry and from the car 1.012 grams is recovered. It is alleged that Raghuvir Patil, Proprietor of Rainbow Paints offered 50,000/- per batch for manufacturing Mephedrone and Manish Raval facilitated the conversion process. Ajay Deka assisted in manufacturing Mephedrone in factory at Rainbow Paint in slurry forms. Rauf Lulania is alleged to have provided raw material for factory premises and Ramchandra Umang, proprietor of Jal Scientific Glass Works assisted in installation of machinery.

When searched for the aforesaid material in the charge-sheet, it is to be found in the statement of the applicant and other accused persons recorded under section 67 of the NDPS Act.

In the wake of the position of law as enunciated by Hon'ble Apex Court in case of *Toofan Singh vs. State of Tamil Nadu*, wherein it has been categorical held that the statement recorded under section 67 of the NDPS Act cannot be used as confession and if the conviction of an accused cannot be secured on the basis of the said statement, and in absence of any other independent material, the conviction cannot sustain.

8. The entire case of the prosecution compiled in the charge-sheet is based on the statement of the applicant and the co-accused persons recorded under section 67 of the NDPS Act.

The statement of the applicant that he was engaged in transportation of Hashish through various consignments and the prosecution relying upon the said statement to charge him that he is main buyer and financier of the said substance in absence of any other material do not justify his further incarceration as he is detained since 20/03/2017 and the trial do not appear to be a possibility in the near future as the prosecution intend to examine 35 to 40 witnesses. No doubt there is seizure of commercial quantity of Mephedrone in slurry form. The accusations are against the accused no.1, who was using his residential flat in Virar for storing Mephedrone and converting it into crystal/powder form for its sale, considering the recovery effected from the applicant he cannot take the blame of recovery of commercial quantity from the co-accused. Though the counsel for DRI would vehemently submit that in statement of Bhanudas More recorded under section 67, he has disclosed that 8 balls of Charas recovered and seized from his rented flats belong to the applicant, and he used to sale the same to various clients, the evidentiary value of the said statement recorded under section 67 is now well settled by the authoritative pronouncement from the Hon'ble Supreme Court. Similar is the case of the statement of the applicant recorded under section 67, where he stated that 8 balls of Charas seized form the residence of Bhanudas More was for sale.

9. Apart from the statement recorded under section 67 there is no other material to attribute possession of commercial quantity to the applicant and mere telephonic connection in form of CDR cannot be said to be sufficient evidence to implicate the applicant in the offence, with which he is charged. I am therefore satisfied that there are reasonable grounds for believing that the applicant is not guilty of

the said offence, with which he is charged, of being in possession and dealing with commercial quantity of contraband. I am also satisfied that he is not likely to commit any offence on bail merely on the ground that in the previous some antecedents have attributed to him. When specifically asked to point out the material of being an financier to accused no.1, there is no material compiled in the charge-sheet to that effect.

In the wake of the above merely because yield found to be in slurry form of Mephedrone as well as raw material is seized from the other co-accused the applicant cannot be further incarcerated, with the culmination of the trial not in foresight. Hence the following order:

: ORDER :

- (a) Application is allowed.
- (b) Applicant- Wazhal Qamer Abdul Wafa Chaudhary @ Pappu Chaudhary shall be released on bail in connection with NDPS Special Case No.79 of 2017 registered with D.R.I Mumbai Zonal Unit on furnishing P.R. Bond to the extent of Rs.1,00,000/- with one or two sureties in the like amount.
- (c) The applicant shall mark his attendance before the DRI on First Monday of every month between 2:00 p.m. to 5:00 p.m.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the

facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall give his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(f) The applicant shall surrender his passport to the Investigating Agency.

(g) The applicant shall not travel outside the jurisdiction of Mumbai and Thane District without permission of the Special Court.

(SMT. BHARATI DANGRE, J.)