

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

CRIMINAL BAIL APPLICATION NO.1248 OF 2022

Armaan Kohli	..Applicant
Versus	
Union of India	..Respondent

Mr. Taraq Sayed a/w Abhishek Yende, Surbhi Agrawal, Shubham K.,
for the Applicant.

Mr. Shreeram Shirsat a/w Amandeep Singh Sra, Nishi Singhvi, Anna
Oommen, Shekhar Mane & Madhur Salkar, for the
Respondent/NCB.

Ms. Sharmila S. Kaushik, APP for the Respondent/State.

CORAM : NITIN W. SAMBRE, J.

DATE : 20th SEPTEMBER, 2022

PC.

1. Based on secret information, after effecting seizure of 25 grams of white colour substance i.e. Mephedrone (MD) Crime No.82 of 2021 came to be registered. During investigation the applicant was arrested on 28th August, 2021, when he was found to be in possession of 1.2 grams of MD. The applicant was accordingly charge-sheeted by the non-applicant/Narcotics Control Bureau.

2. The applicant alleging false implication approached the Special Court under NDPS Act for his release which prayer was rejected on 14th October, 2021. This Court thereafter rejected the prayer of the applicant for grant of regular bail vide order dated 20th

December, 2021 as the investigation was in progress.

3. Subsequent thereto, the applicant again approached the Special Court for grant of regular bail after he was charge-sheeted. The prayer was again rejected on 8th April, 2022. As such, this application for grant of regular bail.

4. The submissions of counsel for the applicant are, the investigation against the applicant is already over. The quantity seized from the applicant is small one for which the maximum punishment is one year. Other similarly placed co-accused viz. accused Nos.4 and 5 are already released on bail. It is claimed that there is no evidence to infer that the applicant is *prima-facie* involved in manufacture, sale, purchase, transport, import and export inter-State directly or indirectly of narcotic substance. It is also urged that upon looking into the relevant material collected by the Investigating Agency as reflected in the charge-sheet, it can be inferred at the most applicant can be held involved in an offence of consumption and not financing trade. It is further urged that there is no likelihood that applicant shall engage in similar type of offence, as there are no antecedents. It is also urged that the withdrawal of the amount from the bank accounts, seizure of phone of the applicant and the certificate under Section 65B(4) of the Evidence Act cannot be found to be a basis for ordering further detention of the applicant. Attention of this Court is also invited to the law laid down by the Apex Court in the matter of ***Tofan Singh***

Vs. State of Tamil Nadu reported in ***(2021) 4 SCC 1***, so as to urge that confessional statement, if any, of the applicant recorded under Section 67 of NDPS Act is inadmissible in trial of an offence under the NDPS Act as same has value to the extent of the investigation of the crime.

5. Mr. Shirsat, learned counsel appearing for respondent/NCB while opposing the bail would urge that this Court has already recorded a finding while rejecting prayer that there is *prima-facie* material to infer complicity of the applicant in an offence punishable under Section 27A, 28 and 29 of the NDPS Act. Attention of this Court is also invited to the *inter se* charge between the present applicant and accused No.7, so also the call details. The charge is sought to be corroborated with the withdrawals made by the applicant from the account so as to establish that the amount was paid for purchase of the drugs or for financing the drug trade. It is as such urged that the call details, whatsapp chat establishes the relation of the applicant with accused No.7.

6. I have appreciated aforesaid submissions.

7. This Court initially rejected the prayer for grant of bail on 20th December, 2021, as the investigation was at nascent stage after which the applicant was charge-sheeted. The fact remains that the applicant has suffered incarceration for a period of more than one year as his date of arrest is 28th August, 2021.

8. Though the prosecution has relied on the whatsapp chat, call details and the withdrawal from the bank account so as to establish nexus of applicant with the accused No.7, a foreign national, the fact remains that the prosecution has only relied on the data retrieved from the mobile of the present applicant. The prosecution has failed to seize the mobile phones from the accused No.7, so also the sim cards. As such, even if Section 65B of Evidence Act certified in relation to the mobile of the applicant is available, however, there is no material to corroborate the same but for the statement of the applicant recorded under Section 67 of the NDPS Act. Such statement of the applicant will not bind him, particularly, having regard to the law laid down by the Apex Court in the matter of *Tofan Singh (cited supra)*.

9. Even if call details and the whatsapp chat messages are appreciated based on the certificate under Section 65B of the Evidence Act, it is difficult to corroborate that amount which was withdrawn by the applicant was paid to the accused No.7 and same was used for financing the drug trade.

10. At the most the evidence available on record pinpoints the involvement of the applicant in an offence of self consumption that too of a small quantity for which punishment prescribed is only one year.

11. In absence of criminal antecedents, it cannot be said that

there is enough evidence on record to infer *prima-facie* involvement of the applicant in which financing, manufacture, sale, purchase, transport etc. of the narcotic substance. Apart from above, the Court is required to be sensitive to the fact that accused Nos.4 and 5 are already ordered to be released on regular bail. The investigation against the applicant is already complete. The role attributed to the applicant as could be noticed from the investigation papers for the purpose of deciding bail application is that of self consumption. Corroboration of the withdrawal of the amount as reflected from the bank statement, *inter se* chats between the applicant and accused No.7 can also be inferred to mean that the said amount was paid for purchase of drug by the applicant for self consumption. Apart from above, the claim of hatching conspiracy cannot be inferred from the available material on record so as to continue further detention of the applicant in the present offence.

12. As such, the application stands allowed.

13. Applicant is directed to be released on bail on executing PR bond of Rs.1,00,000/- with two sureties in the like amount.

14. Applicant shall neither influence the witnesses in any manner nor tamper with evidence.

15. If applicant is found involved in other similar offence, it shall be open for the prosecution to forthwith move for cancellation

of bail.

16. Applicant shall surrender passport forthwith to the Trial Court.

17. Applicant shall attend NCB once in English calendar month between 10.00 a.m. to 12.00 noon.

[NITIN W. SAMBRE, J.]