

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2538 OF 2021

SACHIN DILIP BAGUL

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Mithilesh Mishra a/w. Sadiya Nadeem Khan, Advocate for the Applicant.

Smt.Anamika Malhotra, APP for the Respondent – State.

Mr.Jitendra Mishra, Advocate for Respondent No.2.

CORAM : V. G. BISHT, J.

**RESERVED ON : 8th DECEMBER 2021
PRONOUNCED ON : 3rd JANUARY 2022**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Customs C.R.No.2 of 2015 registered with Customs (Prevention) Narcotic Cell, Pune, for offences punishable under Section 22(c),

AVK

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23(c), 25, 29(2) read with Section 8(c) of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act).

2 On 9th March 2015, the officers of Customs Department intercepted Toyota Etios Car bearing Registration No.MH-06-J-9490 on Pune – Mumbai Express Highway at Talegaon Toll Plaza. The said car was driven by accused Najir Sange. Search of the car was taken and the said accused was found in possession of 50 kg of Mephedrone. During inquiry and investigation his statement was recorded whereupon he disclosed the names of other associates including the name of the applicant in the crime. Pursuant to that, further search of Omkar Industries, F-20, Islampur, District Sangli was taken and during the search 337.865 kg of Mephedrone was seized from that place and the seized contraband was linked with the present applicant and other accused. The informant, accordingly, filed the complaint.

3 Mr.Mithilesh Mishra, learned counsel for the applicant, invited my attention to paragraph 42 of the complaint and submitted that except that, there is absolutely nothing against the applicant. There is no other material to connect the applicant with the alleged offence. Therefore, the applicant deserves to be enlarged on bail.

4 Smt.Anamika Malhotra, learned APP, on the other hand, opposed the submissions and placed reliance on paragraph 42 of the complaint and observations of the trial Court. According to the learned APP, paragraph 44.6 also shows the antecedents against the applicant and submitted that there being no merit in the application, the same is liable to be rejected.

5 Perused the investigation papers including the complaint. Paragraph 42 of the complaint shows that the present applicant and other accused, namely, Ayub Lala Tafsir Khan were deeply involved in transportation and disposal of Mephedrone as admitted by co-accused Ravindra Konduskar, Nazir Ahmed Sange

and Ayub Akbarshal Makander in their statements dated 9th March 2015 and 10th March 2015. It was also gathered that both of them had been arrested by the ATS Charkop Unit, Mumbai in another case of illegal trafficking of Mephedrone. The learned counsel for the applicant is right when he says that except paragraph 42, that too based on confessional statement of the co-accused, there is no other incriminating evidence against the applicant.

6 The learned counsel during the course of argument has also placed reliance in **Tofan Singh vs. State of Tamil Nadu**¹. At paragraph 155, the Hon'ble Apex Court has made following observations :

“155 We answer the reference by stating : (1) That the offices who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act and

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cannot be taken into account in order to convict an accused under the NDPS Act. (ii) That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”

7 From the above observations of the Hon'ble Apex Court, it is clear that the statement under Section 67 of the NDPS Act cannot be relied upon. I have already pointed out that except confessional statement of named accused at paragraph 42, there is no other material or cogent evidence to show involvement of the applicant in the crime.

8 It is also not the case of prosecution that the applicant was found in conscious possession of the contraband, namely, Mephedrone. The learned trial Court seems to have not taken into consideration all these aspects and straightaway by taking recourse to Section 37 of the NDPS Act rejected the application.

9 Assuming for the sake of argument that there is antecedent, but since in the instant case no cogent evidence is forth coming to prima facie connect the applicant with the alleged offence, the factor of antecedent alone will not weigh in favour of the prosecution. In any case, I do not find any incriminating evidence to substantiate the averments made in paragraph 42.

10 This being so, the embargo under Section 37 of the NDPS Act would not apply to the case of applicant. Therefore, I am inclined to allow the application. Hence, I pass the following order :

ORDER

- (i) Applicant – Sachin Dilip Bagul shall be released on bail in Customs C.R.No.2 of 2015 registered with Customs (Prevention) Narcotic Cell, Pune, on his executing P.R.Bond in the sum of Rs.50,000/- with one or two sureties in like amount.

- (ii) The applicant shall not indulge in criminal activities of such kind.
- (iii) The applicant shall attend the Court proceedings regularly.
- (iv) Bail before the trial Court.
- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.
- (vii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)