

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2743 OF 2021

Shahid Syed alias Syed Ahmed .. Applicant
Hasan

Versus

Union of India through Intelligence .. Respondents
Officer & Anr.

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Mr.Anil Lalla with Ms.Riddhi Hakeem i/b Lalla & Lalla for the Applicant.

Mr.Amit Munde, S.P.P. for the DRI/Respondent No.1.

Mr.S.H.Yadav, A.P.P. for the State/Respondent No.2.

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CORAM: BHARATI DANGRE, J.
DATED : 15th NOVEMBER, 2022

P.C:-

1. The applicant faces trial in NDPS Special Case No.133 of 2021, on being charged under Sections 8(C), 22(C), 27A, 28, 29 of the NDPS Act and also under Section 9A of the said Act. He came to be arrested on 17/08/2020 at Hyderabad and charge-sheeted as accused No.2. He remains incarcerated and seeks his release on bail on the ground of his non-involvement and in particular, by submitting that as far as the present applicant is concerned, the charge-sheet alleges that he was in possession of 85 gms of Ephedrine and 121 gms of Norephedrine, which is a controlled substance and on conviction, he would invite an imprisonment upto ten years as

there is no concept of small/commercial quantity applicable to a controlled substance.

2. Heard learned counsel Mr.Lalla for the applicant and learned S.P.P. Mr.Munde for DRI.

With their able assistance, I have perused the material in form of the complaint and the reply filed by respondent No.1, opposing the application. The case of the DRI, which surfaces through the complaint is to the effect that the officers of DRI, Mumbai received specific intelligence that one Venkat Reddy and his partner had manufactured Mephedrone at Hyderabad and it was delivered to an intermediate person for being supplied to two Mumbai based buyers, Ashfaq and Ahmed. The intelligence specified that the consignment would reach Mumbai on 14/08/2020 as cargo by a private commercial bus and would be dispatched at the residence of Ashfaq at Kalyan by one Naushad, who runs a travel agency in the name of 'Limra Travels'.

The information so received, was reduced in writing and one team of officers proceeded to Sanpada, while other team was deputed to Kalyan.

On reaching the office of Limra travels, two persons were found to be present by the DRI officers, who gave their names as Naushad Alam and Shafiq Alam, his employee. The consignment was found in the premises, which was allegedly transported from Hyderabad, but as the place was not conducive for conducting detail search, the DRI team proceeded to their office at Marine Lines. From the two

cartons, 45.655 kg. Mephedrone was seized. The procedure of search, seizure, sealing, sampling, labeling and drawal of panchnama is recorded.

The second team, which proceeded to Kalyan, reached the house of accused No.1-Ashfaq and on the house being searched, some plastic cans containing chemicals, glass condenser and other manufacturing equipments were recovered. Several persons were found in the house, including the applicant, who was present on the first floor of the premises. In the said search, Mephedrone, Ketamine, cash of Rs.44,09,000/-, US Dollars and Euros were seized.

3. Learned counsel Mr.Lalla would submit that the presence of the applicant in the house is not an incriminating factor, as it does not belong to him and he had no knowledge that the premises had stored the contraband.

Thereafter, the team of the officers proceeded to the residence of the applicant, situated at Kazi Sayyed street, but no incriminating material was recovered. Second search was carried out in another residential premises of the applicant at Dongri, which resulted in recovery of one industrial thermometer, one funnel, one glass pipette, Acetone etc. Search of almirah led to recovery of plastic pouches containing some powder, which was identified as Ephedrine and Norephedrine and it weighed 85 grams and 121 grams respectively. The said substance, which was seized from the premises of the applicant is declared by the Government as Controlled Substances.

In the wake of the seizure, the argument of Mr.Lalla is that the applicant, at the most, can be charged for committing an offence under Section 9A, which is punishable under Section 25A of the NDPS Act. He would submit that controlled substances, have both legitimate and illegitimate use and have no repercussions as narcotic drugs or psychotropic substances have.

4. During the course of investigation, accused No.3-Bobba Venkat Reddy was apprehended from Hyderabad and on completion of investigation, a complaint was filed by DRI, Mumbai before the NDPS Special Judge.

The argument advanced on behalf of the applicant is precise to the effect that there is no recovery of any narcotic drug or psychotropic substance from him and on the contrary, there is recovery of some controlled substances, for which he need not be further incarcerated. It is also sought to be submitted that the embargo created by virtue of Section 37 of the NDPS Act is not applicable to the case of the applicant.

5. With the able assistance of the learned counsel for the applicant and the learned counsel for the respondent No.1, I have perused the charge-sheet, which has compiled the material collated during the course of investigation. The total quantity of the psychotropic substance seized in the case is, 65.208 kgs. of Mephedrone and 10.018 kgs. of Ketamine, both are commercial quantity under the NDPS Act. Apart from this, Norephedrine and Ephedrine is also seized from the

residential premises of the applicant and, therefore, the question that calls for examination is, whether the applicant's role is restricted to the case of recovery from his premises or he is also connected with the recovery of the contraband from the premises of accused No.1. Necessarily, therefore, it has to be determined, whether the applicant is a part of illicit trafficking of the psychotropic substance, so seized.

6. The connection of the applicant is to be found in the charge-sheet, in the statement of Naushad Alam, recorded under Section 67 of the NDPS Act. Said Naushad owned parcel services company by name 'Limra Travels' in Sanpada, Navi Mumbai. He states that on 14/08/2020, he received a call from one Shoaibbhai at Hyderabad, who informed him that he was sending two parcels through a bus operated by Om Sai Ram Travels and he was asked to collect the parcel from the bus driver and the consignee himself would visit his office to collect his parcel. He was also send the necessary details like the photograph of the bus, luggage receipt of the parcel, bus registration number and the contact number of the driver through WhatsApp. Accordingly, Nausahd informed his employee (Shafique) that two parcels were arriving from Hyderabad, which are to be collected and kept in the office. Accordingly, Shafique collected two parcels and kept it in the office, as instructed.

He categorically stated that he did not receive money for the said work, since he shared business relations with Shoaibbhai for last one year, though he never met him personally. He further stated that he received a call from

mobile number 9167961887 i.e. from Shahid Syed (applicant), who inquired about the parcel being received by luggage receipt No.406. He also received a call from another mobile No.7756802927 (Ashfaq), who also inquired about the parcel. On receipt of the parcel, he informed the person with mobile number 9167961887 about arrival of the parcel, when he informed him that he himself cannot collect the delivery and he requested to arrange the tempo and send the parcel to Fortis Hospital, APMC, Kalyan, where he would take the delivery.

Another statement of Majid Khan is also recorded under Section 67 and he is the person, who arranged the delivery of same parcel to Kalyan and he had paid the fare of the driver of the tempo.

7. The complaint also included the summary of chat between Ashfaq and the present applicant, extracted from his mobile number to corroborate the accusations. The case of the prosecution is, the applicant through one person of Hyderabad, provided contact details to Bobba Venkat Reddy and arranged transportation of consignments of 32 kgs. and 45.655 kgs. of Mephedrone from Hyderabad to Mumbai on two occasions. The WhatsApp communications, photos of Mephedrone and packages etc. were recovered from the mobile phones and the conspiracy hatched for dealing in psychotropic substances and controlled substances has surfaced through the complaint. The applicant played a key role in the entire episode and Naushad has referred to a phone call received from the mobile number, which belongs to the

applicant and which, *prima facie*, establish that he had knowledge that the parcel contained the psychotropic substance and he was thus actively involved in illicit trafficking of huge quantity of psychotropic substance. The copies of the luggage receipts received from Sarmad Bhatta, are retrieved from the phone of the applicant after forensic examination, which establish the charge levelled against him for arranging for transportation of consignment of Mephedrone from Hyderabad to Mumbai and payment of transportation charges was made by accused No.1 through accused No.2 i.e. the present applicant. He was also present at the residence of accused No.1 for taking delivery of the consignment in pursuance to the conspiracy.

Prima facie, it can be inferred from the above that the applicant was aware about the parcel being delivered and that is why, he was found to be present there. Merely because what was recovered from the residence of the applicant was a controlled substance, does not sever his link with illicit trading in Mephedrone, which was transported at his instance and which has been seized from the house of accused No.1. The apparatus seized from the residence of the applicant further establish that he was involved in manufacturing and testing of psychotropic substances. Further, the forensic evidence, laboratory test report as well as the statement of the independent witnesses, who are the accused, corroborates the role of the applicant in the entire conspiracy of procurement, purchase, inter-state transportation, possession and for using his residential premises for storage and concealment of contraband. Further, the respondents have clearly established

that the mobile number 9167961887 was used by the applicant for illicit trafficking. The quantity involved is commercial quantity and I am not in a position to cross the rigours of Section 37 of the NDPS Act, on the basis of the material placed vide the complaint upon recovery of huge commercial quantity of Mephedrone & psychotropic substance.

Hence, the application is rejected.

(SMT. BHARATI DANGRE, J.)