

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

BAIL APPLICATION NO. 2872 OF 2021

Shri Meenanath Bodake ...Applicant

Versus

Intelligence Officer, D.R.I. & Anr. ...Respondents

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Mr. Taraq Sayed i/b. Mr. Advait Tamhankar for the Applicant.

Ms. Ruju R. Thakker for Respondent No.1 (DRI).

Ms. Pallavi N. Dabholkar, APP for the Respondent -State.

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CORAM : V.G.BISHT, J.

RESERVED ON : 9TH DECEMBER, 2021

PRONOUNCED ON : 4TH JANUARY, 2022

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in File No. DRI/MZU/ C/INT-42/2020 for offence punishable under Section 8 (c) read with Sections 21 (c), 23, 25, 27-A, 29, 31-A of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act").

2. A specific information was received by the Joint Director, D.R.I. on 7th August, 2020 to the effect that during

examination of a container No. INKU2267955 imported under Bill of Entry No. 8349682 dated 1st August, 2020 is suspected to contain a contraband covered under the NDPS Act. Accordingly, the officers of D.R.I. reached and examination proceeding was recorded in the presence of two Panch witnesses and applicant. The officers with the help of Drug Detection Kit conducted test on the alleged creamish colour powder allegedly recovered from the wooden structure which was found in bag No. 3 and the same tested positive for heroin.

3. Further, during examination 1783 wooden structures were found, which were purported to contain contraband. All the wooden structures were cut open wherein 191.60 kg of creamish colour powder purported to be heroin was recovered. After carrying out necessary formalities of packing and panchnama proceedings, summons were issued to applicant under Section 67 of the NDPS Act. The applicant voluntary gave statement.

4. During further investigation, other accused were also arrested and after thorough investigation, a complaint came to be filed.

5. Mr. Sayed, learned Counsel for the applicant, submits that prosecution does not dispute that the applicant is a Customs House Agent (CHA). There is no evidence on record to show that the applicant had knowledge about contraband. Even prosecution has not been able to establish nexus between alleged recovery of contraband and the role of applicant. Rather there is overwhelming evidence against other accused. Investigation is completed. Charge-sheet has been filed. In such circumstances, the applicant deserves to be enlarged on bail, argued learned Counsel

6. Ms.Thakker, learned Counsel for respondent No.1, vehemently opposes the submissions and contends that the material on record would suggest that applicant had every knowledge of the contraband being transported. Learned counsel also invited my attention to the various paragraphs of

the reply filed on behalf of D.R.I., Mumbai and would submit that offence being of a serious nature, the applicant should not be enlarged on bail.

7. Perused investigation papers. I have also gone through the reply filed by D.R.I.

8. It appears that pursuant to seizure of the contraband, the statement of applicant came to be recorded under Section 67 of the NDPS Act. During the course of submission, learned Counsel for the applicant submitted that his statement is not admissible in law in view of the dictum of the Hon'ble Apex Court given in case of *Tofan Singh vs. State of Tamil Nadu*¹.

9. I have also gone through the statement of applicant recorded under Section 67 of the NDPS Act. It does not make any difference to the case of prosecution inasmuch as it is exculpatory in nature.

10. It is also seen from the reply of D.R.I. that one M/s. M B Shipping & Logistics Solution is the custom broker, who was

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engaged for clearance of the container in question. The applicant, admittedly, is one of the partner of the said firm and the above consignment was imported by M/s. Sarvim Exports, Delhi. It is interesting to note that the applicant used to receive payment for import consignments of M/s. Sarvim Exports from Mohammad Nauman i.e. original accused no. 4, who used to make the payment through bank accounts. The details of which are given at paragraph No. 5.7 of the reply of D.R.I. In fact payment ought to have been made by M/s. Sarvim Exports that is to say it should have paid by accused Sarvesh Bhatia but it was not so and the payment was made by accused No.4.

11. Learned counsel for the applicant on this point submitted that the applicant is concerned with his brokerage and clearing the consignments for his clients and was not duty bound to check and verify the source of the payment made to him. This appears to be a lame excuse and does not appeal to judicial conscience.

12. Moreover, the D.R.I. has also given the details of call details between the applicant and accused Nos. 2 and 4 at paragraph No. 5.8 of the reply and that also goes to show that the applicant was in regular touch with accused No.4, namely, Mohammad Nauman. Even whatsapp messages were exchanged. Apparently, there is something more that what meets to the eyes.

13. From the above circumstances, it cannot be said that the applicant has made out a case for grant of bail. In the light of above circumstances, it cannot be held even *prima facie* that the applicant is not guilty of the offence charged.

14. In view of above, I am not inclined to allow the application. Hence, the following order :

ORDER

Bail Application is rejected.

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(V.G.BISHT, J.)