

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

BAIL APPLICATION NO.1499 OF 2020

Wasim Mehmood Abrehani

...Applicant

Versus

Union of India and Anr.

...Respondents

....

Mr. Ayaz Khan for the Applicant.

Mr. Jitendra Mishra with Mr. Ashutosh Mishra for Respondent No.1

Mr. M.G. Patil, APP for Respondent No.2-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 13th APRIL, 2022.

P.C.:-

1. This is an application for bail filed by the Applicant, who is facing trial in Special Case No.352 of 2020 (NDPS) pending before the NDPS Court at Thane, for offences punishable under Sections 8(c), 22(A) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. Heard Mr. Ayaz Khan, learned counsel for the Applicant, Mr. Jitendra Mishra, learned counsel for Respondent No.1-UoI and Mr. M.G. Patil, learned APP for Respondent-State. Perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. Upon specific information gathered by the officers of Revenue Intelligence (RI), raid was conducted and one vehicle MH-01-BB-9510 was intercepted near Nerul Station. The accused No.2, the occupants of the said vehicle was found in possession of 25 kg of Mephedrone, a psychotropic substance. Pursuant to the information given by accused No.2, another car having registration No.MH-02-EH-1667 was intercepted and accused Nos.1 and 3 were apprehended. Nothing was recovered from the possession of accused Nos.1 and 3. The statements of accused Nos.1, 2 and 3 were recorded under Section 67 of the NDPS Act. Accused Nos.2 and 3 claimed that accused No.1 was the master mind whereas accused No.1 stated that Kailash Rajput, who was in Dubai was the main accused in the said crime.

4. The Applicant was not named by accused Nos.1, 2 and 3. Nevertheless, CDRs of Kailash Rajput revealed that there were calls between the Applicant and Kailash on 11/1/2020 and 12/01/2020. The Applicant was summoned on 04/02/2020 and his statement was recorded, which revealed that the Applicant had procured sim No.7249410256 through his brother Muzamil in the name of one Fauzan Jigaru on 14/11/2019. It is the case of the prosecution that the said sim

card was used by the Applicant to call Kailash Rajput at Dubai. It is also alleged that the Applicant destroyed the sim and the handset by throwing the same at Vasai Creek.

5. Thus, the only material against the Applicant is (i) the statement of the co-accused as well as his own statement recorded under Section 67 of the N.D.P.S. Act., (ii) call details, which show that the Applicant was in contact with the main accused Kailash Rajput (iii) that the Applicant had purchased the sim card through his brother in the name of fictitious person and (iv) that the Applicant destroyed the sim and handset. It is also stated that the Applicant has several antecedents and that he is likely to commit similar offences, if granted bail.

6. At the outset it may be mentioned that the Hon'ble Supreme Court in *Tofan Singh vs. State of Tamil Nadu, 2020 SCC Online SC 882* has held that officers, 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 provision of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act. It is further held that statement recorded under

Section 67 of NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

7. In *State by (NCB) Vs. Pallulabid Ahmad Arimutta and Anr.* in *SPECIAL LEAVE TO APPEAL (CRL.) NO.242 OF 2022* while challenging the order of bail heavy reliance was placed on the confessional /voluntary statements of the accused and co-accused under Section 67 of the NDPS Act and the CDR details. While rejecting the challenge, the Hon'ble Supreme Court has held that :-

“10. It has been held in clear terms in Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1, that a confessional statement recorded under Section 67 of NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section-67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial.”

8. Similar view has been taken by the learned Single Judge of

this Court in *Abdul Mohammed Shaikh vs. Union of India in Bail Application Noi.102 of 2020* and *Jabbar Humejekhan Mulla vs. The Commissioner of Customs and Anr. in Bail Application No.3419 of 2021*.

9. In the instant case, no contraband substance was recovered from the Applicant. In the light of the decision of the Apex Court in *Tofan Singh* (Supra) the confessional statement of the Applicant under Section 67 of the NDPS Act, cannot be relied upon. The only other material against him is that he had obtained a sim card in the name of one Fauzan Jigaru, which was used by him to call Kailash Rajput, who is stated to be the main accused. There is no direct evidence to show the nexus between the Applicant and said Kamlesh Rajput. In the absence of such corroborative material, the mere fact that the Applicant had purchased a sim card in the name of Fauzan Jigaru, that he was in contact with Kailash Rajput or that he had destroyed the hand set would not at this stage establish the live link between the Applicant and Rajput. Even otherwise, as held by the Apex Court in *Pallulabid Ahmad* (supra), this is an aspect to be considered at the stage of trial. Under the circumstances, rigors of Section 37 are not attracted.

10. It is stated that the Applicant has been discharged from other

crimes. The Applicant is the permanent resident of Vasai and as such there is no possibility of the Applicant absconding or thwarting the course of justice. He is in custody since 04/02/2020 and the charge is not yet framed. Considering the large pendency, there is no possibility of the trial being concluded within a reasonable time.

11. Hence, the application is allowed on the following terms and conditions:-

- (i) The Applicant, who is facing trial in Special Case No.352 of 2020 (NDPS) pending before the learned NDPS Court at Thane is ordered to be released on bail on executing PR bonds in the sum of Rs.1,00,000/- with one or two sureties to the like amount;
- (ii) The Applicant shall report to the concerned police station on the first Monday of every month, until further orders.
- (iii) The Applicant shall keep the Investigating Officer informed of his current address and mobile contact numbers, and/or change of residence or mobile

details, if any, from time to time.

12. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)