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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 18 OF 2022

Rajender Kumar

... Applicant

Versus

Union of India thr. Intelligence
Officer And Anr.

... Respondents

Mr S. S. Kantak, Senior Advocate *with Mr Athnain Naik, Ms Saicha Dessai, Ms Neha Kholkar and Ms Krupa Naik, Advocates for the Petitioner.*

Mr Pravin N. Faldessai, Deputy Solicitor General of India *for the Respondents.*

CORAM: M. S. KARNIK, J.

DATED : 24th APRIL 2023

P.C.:

1. Heard Shri Kantak, learned senior advocate for the applicant.
2. This is an application for pre-arrest bail in connection with crime no.5/2021 registered at the Narcotics Control Bureau (NCB) against the applicant and three other accused for offences punishable under Section 8(C), r/w. Section 20(b)(ii)(a), 21(b), 22(C), 27, 27A, 28, 29, 30 and 35 of the Narcotic Drugs & Psychotropic Substances Act ('NDPS Act' for short).

3. My attention is invited to the order dated 30.06.2022 passed by this Court while granting interim protection to the applicant. The order reads thus:-

'P.C.:

1. Heard Mr. S. S. Kantak, learned Senior Counsel for the applicant and Mr. P. Faldessai, learned Assistant Solicitor General for the respondents.

2. At the outset, Mr. P. Faldessai, learned Assistant Solicitor General seeks time to take instructions. Time granted.

3. Pending the application for anticipatory bail, the applicant was granted interim bail by the learned Sessions Court.

4. Mr. Kantak, learned Senior Counsel for the applicant, on instructions, submits that after granting interim pre-arrest bail, the applicant joined the investigation and reported to the investigating officer nearly on eight occasions. The statement is accepted.

5. Chargesheet in the crime has been filed. It means investigation is over.

6. Mr. Kantak, learned Senior Counsel has invited my attention to the chargesheet/summary of charges and particularly paragraph 110 thereto. It shows that the applicant is a lessee of a shack where from narcotic substances were allegedly recovered by the respondents. It appears the shack was run and managed by the applicant's brother, who is accused in this crime. He has been granted bail by this Court on 14.10.2021. Be that as it may, paragraph 110 of the chargesheet/summary of the charges reveals that the applicant did not produce various registers documents and licenses issued by the panchayat or tourism department for running the shack. Further it appears, that the applicant could not submit DVR of CC TV footage of shack. Prosecution in these circumstances presumed that the applicant has had the culpable mental state under the purview of the Section 35 of the NDPS Act for allowing the accused no.1 in illicit trafficking of narcotic drugs.

7. Primary evaluation of material on record does not suggest complicity of the applicant in the subject crime. However, since the learned Assistant Solicitor General seeks time to take instruction, stand over to 28.7.2022 for further consideration.

8. In the meanwhile, in the event of arrest of the applicant in the crime no.5/2021, registered against him, he shall be released on bail, on executing Personal Recognition Bond of Rs.50,000/- with one or more sureties in the like amount. Applicant shall not tamper with the evidence and shall join the investigation if required by the investigating officer.
9. Stand over to 28.7.2022.'

4. Mr Pravin Faldessai, learned Deputy Solicitor General of India, in all fairness, states that the chargesheet has been filed. He, however, submits that the applicant is not cooperating with the investigation. Upon going through the materials and on reading of the order dated 30.06.2022, it is revealed that after grant of interim protection by the trial Court, the applicant had joined the investigation and reported to the Investigating Officer on nearly 8 occasions. Learned Deputy Solicitor General submitted that it is later that the applicant did not cooperate with the investigation.

5. The interim order dated 30.06.2022 passed by this Court reveals that though the applicant was a lessee of the shack from where the alleged narcotic substances, i.e. *15 blots of LSD weighing 0.246 grams (much more than commercial quantity), 58 grams of Methamphetamine (much more than commercial quantity, 12.9 grams of Cocaine, 0.85 grams of Ecstasy, 3.46 grams of Ganja, 10.64 grams of Heroin(Brown Sugar), 6.06 grams of MD and 3.42 grams of Heroin (Light Yellow in colour)* was recovered, it was his brother who was running the shack. The applicant's brother who is also a co-accused was arrested.

6. By order dated 14.10.2021 passed by this Court, the applicant's brother Bhupinder Singh, has been released on bail. It would be material to re-produce the relevant observations of this Court in its order dated 14.10.2021 granting bail to the applicant's brother.

'3. Mr. A. Gosavi, learned counsel appearing for the applicant submits that in the present case the applicant is alleged to be running a cafe in the State of Goa, although he is original resident of State of Himachal Pradesh. The allegation is that a raid was conducted by the respondent no.1 Narcotic Control Bureau through its officials on the Cafe on 30.4.2021 upon receiving information that the co-accused one Mr. Mustafa was present with contraband. When the raid was conducted, it appears that the said co-accused person escaped and that contraband was recovered from the Cafe which allegedly consisted of the following materials:-

- a. 15 blots of LSD weighing 0.246 grams(much more than commercial quantity)*
- b. 58 grams of Methamphetamine (much more than commercial quantity).*
- c. 12.9 grams of Cocaine.*
- d. 0.85 grams of Ecstasy,*
- e. 3.46 grams of Ganja,*
- f. 10.64 grams of Heroin(Brown Sugar),*
- g. 6.06 grams of MD*
- h. 3.42 grams of Heroin (Light Yellow in colour)*

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5. The case of the applicant is that he was not present when the raid was conducted. In fact, the officials of the respondent no.1 had informed the owners of the Cafe and Shacks like the applicant herein that co-caused Mustafa and other such persons were indulging in activity of drugs supply and that if there was any information, it could be forwarded to the officials of the respondent no.1. According to the applicant, on 25.3.2021, the said co-accused Mustafa had visited the Cafe of the applicant and used abusive words and further stated that he would be selling drugs etc. It is also claimed that the said co-accused Mustafa assaulted the applicant. As a result, the

applicant tried to contact the concerned officials of the respondent no.1 and according to him, when he was told that he should report to the local police station, the applicant visited the police outpost reporting the said incident, resulting in non cognizable report against the said co-accused Mustafa, a Nigerian National, on 25.3.2021 for offences under Sections 504 and 323 of the IPC.

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8. This Court has perused the material on record. It is an admitted position that the applicant was not present at the Cafe when the raid was conducted on 30.4.2021. In fact, the applicant was apprehended from his home State from Himachal Pradesh and then brought to the State of Goa after about 10 days of the incident. There is no dispute about the fact that on 25.3.2021, the applicant had caused non-cognizable report to be registered at police out post against co-accused Mustafa, clearly stating that said co-accused assaulted and abused the applicant and stated that he would be selling drugs in the vicinity of the Cafe run by the applicant.

9. At this stage, to examine as to whether the applicant has made out prima facie case in his favour, this Court perused the panchanama with the assistance of the learned Addl Public Prosecutor as to the manner in which the contraband was recovered. Contents of the panchanama show that on the date when the raid was conducted the entire contraband was found in a card board box allegedly found in the Cafe. It is also recorded in the panchanama that search was conducted of the area in and around the Cafe but no further contraband was recovered. This prima facie does indicate that there is possibility of the co-accused Mustafa having escaped from the Cafe upon receiving information about the impending raid from the officials of the Narcotic Control Bureau on 30.4.2021, leaving behind the box of the contraband in the Cafe.

10. In view of the above, this Court is of the opinion that a prima facie case is made out by the applicant and that he can be enlarged on bail by imposing appropriate conditions.'

7. It is the case of the applicant that he was in Himachal Pradesh at the relevant time when the raid was conducted. It is further his case that the applicant's brother Bhupinder was running the Cafe. Considering that the chargesheet has been filed and that the applicant had joined the investigation, the interim protection granted by this Court can be confirmed. In case the NCB needs to carry out further investigation, it is always open to the NCB to make appropriate application before the trial Court under the provisions of Section 173(8) of the Cr.P.C.

8. The application is allowed by confirming the interim protection granted by this Court. In the event of arrest of the applicant, he shall be released on bail on executing a PR bond of ₹50,000/- with one or more sureties in the like amount. The applicant undertakes to attend the trial Court regularly. This statement is accepted. The applicant shall not tamper with the evidence.

9. The application is disposed of.

M. S. KARNIK, J.

MARIA SUZANA
REBELLO

Digitally signed by MARIA SUZANA
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