IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 749 OF 2023

NETHAJI KRISHNAIAH ..APPLICANT
VS.
THE IO, DRI AND ANR. ..RESPONDENTS

WITH
BAIL APPLICATION NO. 2671 OF 2023

GANESH KUMAR ..APPLICANT
VS.
THE IO, DRI AND ANR. ..RESPONDENTS

Adv. Munira Palanpurwala Shaikh a/w Adv. Deepa Amati a/w Adv. Shabana Shaikh for the Applicants.

Adv. Advait M. Sethna a/w Adv. Rangan Majumdar i/b Adv. Ruju R. Thakker for the Respondent No.1.

Mr. P. H. Gaikwad, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 19, 2023

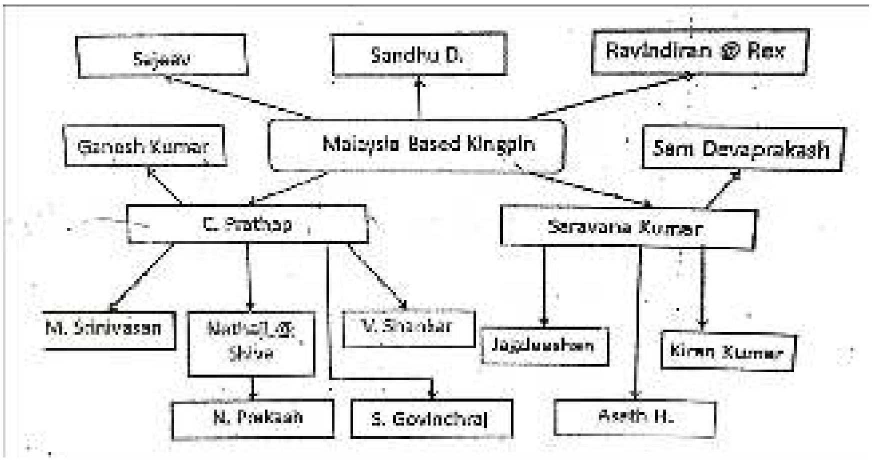
P.C. :

1. Heard learned counsel for the applicants and Shri Sethna, learned counsel for respondent No.1.

2. This is an application for bail in respect of the offence punishable under Sections 8(c), 22(c), 23(c), 25, 27(a), 29, 30 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter "NDPS Act", for short) registered vide Crime F.No.DRI/MZU/C/INT-116/2018 with Directorate of Revenue Intelligence (DRI).

3. It is the case of the prosecution that specific intelligence was received by the officers of DRI that one person named Sandhu was carrying out the manufacturing of Ketamine HCL, an alleged psychotropic substance at Plot No. A-20, Patalganga MIDC, Rasayani, Dist- Raigad. It is also alleged that after manufacturing the alleged psychotropic substance Ketamine was stored in M/s. Ganesh Enterprises at Plot No.14, Chowl Village, Taloja - Ambernath Road, Taloja MIDC, Raigad. It is further alleged that Accused No.2 i.e. Sam Devaprakash @ Stephen was handling the work of renting the premise for manufacturing and storing of raw materials required for the manufacturing of Ketamine and for storage of the alleged psychotropic substance Ketamine. For ease of convenience, it may be relevant to refer to the relevant portions of the detailed complaint lodged by the respondents. The same read thus:-

> "77. A flowchart of series of recruitment (i.e. who recruited whom) in the syndicate as given below:



78. Surya Raj Pillai @ Jack, a Malaysia based person holding Malaysian passport no. A19949229 masterminded a syndicate involving manufacture and export of psychotropic substance and with the help of Shri C. Pratap and Shri M. Ravindiran, he expended the syndicate and recruited various persons for their roles in syndicate. He used pseudo name Jack to conceal his real identity. He also gave pseudo name to other members of syndicate. He kept in touch with the members of syndicate on phone and gave instructions of phone from Malaysia. His mobile number as given by different persons are as given below:

Mobile No.	Given by person
060163964717	Sajeev Kasim
066631574856	Sajeev Kasim, Sam Devaprakash & A.G. Parthsarathy
66979450741	Sam Devaprakash
66622399004	Sam Devaprakash

79. Shri Ravivarma Padarsono, a Malasian national having passport no. A39688142 often visited Ketamine manufacturing laboratory/factory and godown at Taloja. He gave instructions of members of syndicate for their roles and played important part in manufacturing of Ketamine. He was also present with Shri Ramesh Biswal during the purchase of Skoda Car having registration no. MH-01-AR-6989

from M/s. Suri Auto Zone which was later used by Sandhu D.

80. Shri Sandhu D., a resident of Sindhu Bhavan, Kollamkonam, Vilappil, Villappilsala, Thruvananthapuram - 695573 was expert in manufacture of Ketamine and gave directions to Vishnu, Murli and other workers in Rasayani plant. He used to select the factories apt for manufacture of Ketamine. He had handed over seized 12.710Kgs of Ketamine to Shri Prakash N. for storage in godown at M/s.Ganesha Enterprises. During the course of investigation, he could not be traced and remained absconded.

81. The complainant submit that Shri C. Prathap @ Mike Accused No. 1 aided and abetted in a criminal conspiracy for illicit menufecturing, transportation, warehousing and export of Ketamine. He recuited S/Shri Ganesh Kumar, K. Nethaji, M. Srinivasan, S. Govindhraj and V. Govindhraj for their roles in the syndicate. He coordinated with members of syndicate on behest of Malaysian based handler. He looked after recruiting persons for renting godowns/factory in their names and circulate money in the syndicate. He was very well aware of his indulgence in illegal trafficking of banned substance covered under NDPS Act, 1985 and its consequences thereof and thereby committed an offence under Section 8(c), Sections 22(c), 23(c), 27A, 29 of the NDPS Act, 1985.

82. The complainant submits that Sam Deva Prakash alias Steven alias Raj Accused No.2 was involved in a criminal conspiracy for the illicit possession, export from India, transportation and warehousing of Ketamine. Admittedly he had harboured persons viz. N. Prakash, Ramesh Biswal in hotel rooms and took them to godowns hired by him. His main job was to look for rundown factories and godowns at remotest places to start their manufacturing activities and for storing their illegally manufactured drugs. He also procured chemicals for manufacture of drugs. He registered companies in the name of various persons sent from Chennai to

Mumbai by the members of the syndicate. He created email and bank account in their names. He has registered for GST numbers and other Company law related activities. He appointed Chartered Accountants for looking after company related activities. He registers Leave Licence agreements with various plot owners. Admitted he had a hand in creating Chakra Enterprises and Ganesh Enterprises from where Ketamine was manufactured and stored. He has also created export documents and sent it across to N.Prakash. He has coordinated with Dubey of Nobel Logistics for facilitating export of drugs. Admittedly he has purchased generators, Tata ACE vehicle for transportation for the syndicate and carned commission in such transactions over and above money deposited in his account. He has received lakhs of Rupees in his company i.e. Saras, Enterprises Account and also received money from persons at Chennai. He met almost all players of the syndicate thereby making him one of a key person of the operations. He sometimes introduced himself as Steven and othertimes he called himself as Deva. Overall he acted as a pointsman for the syndicate at Mumbai and in the process. He was directly in touch with the Kingpin of the syndicate Ajay and his associates Jack and Anna. Hence he has committed an offence under Section 8(c), Sections 22(c), 23(c), 29 and 30 of the NDPS Act, 1985.

83. Tho complainant submits that Shri N. Prakash, Accused No.3 was involved in a criminal conspiracy for the illicit possession, export, from India, transportation and warehousing of Ketamine. He was directly in touch over phone with their masters based in Malaysia viz. Jack & Ajay. He has received export documents from communication Centre and handed them over to Dubey of Nobel Logistics. He has also frequently transported illegally manufactured drugs from Rasayini to Taloja. He has also transported 12.7 Kgs Ketamine under seizure under instructions of Sandu. He handed over money to various persons. He has also booked transporters for transporting drugs concealed inside detergents from godown to Air Cargo Complex. He was very well aware of his

indulgence in illegal trafficking of banned NDPS drugs and its consequences thereof. Accused No. 1 has knowingly aided and abetted in sale and export of psychotropic substance i.e. Ketamine and have thereby committed an offence under Section 8(c), punishable under Sections 22(c), 23(c), 29 and 30 of the NDPS Act, 1985.

84. The complainant submits that Sajeev Kasim, accused No.4 was involved in a criminal conspiracy for the illicit possession, export from India, transportation, warehousing and transhipment of Ketamine. Admittedly he had aided and abetted in the illegal export of psychotropic substances Ketamine. He was very well aware of his indulgence in illegal trafficking of banned NDPS drugs and its consequences thereof and have thereby committed an offence under Section 8(c) punishable under Sections 22(c), 23(c), 29 and 30 of the NDPS Act, 1985.

85. The complainant submits that Jagdeeshan M. Accused No.5 aided and abetted a criminal conspiracy for the illicit possession, export from India, transportation and warehousing of Ketamine. He received consignments from Bhiwandi and transported to Koparkhairne on the instructions of Jack/Anna. He also visited various chemical shops at Mumbai for purchasing raw materials. He introduced Kiran Kumar Varadhariu to Saravana Kumar and brought him into the syndicate. He was very well aware of his indulgence in illegal trafficking of substance covered under NDPS Act, 1985 and its consequences thereof and hence committed an offence under Section 8(c), Sections 22(c), 23(c), 29 and 30 of the NDPS Act, 1985."

The paragraphs quoted above set out the nature of the accusations against the concerned accused. Accused Nos. 2, 3, 4, 5 are enlarged on bail with whom the applicants claim parity.

4. So far as the applicant Nethaji Krishnaiah in Bail Application No. 749 of 2023 is concerned, paragraph No.86 sets out the accusations against him. The same reads thus:-

> "86. The complainant submits- that Netaji K. alias Shiva Accused No.6 aided and abetted the manufacture of Ketmine and is a part of criminal conspiracy. Admittedly he had recruited persons viz. N.Prakash,Pappu Panda, Ramesh Biswal, Deepan Chakravorthy and Selvam for the syndicate and sent them to Mumbai and Delhi for their activities. He is a very close relative i.e. brother in law of C. Prathap. He received money from the syndicate He received money in person from Srinivasan, Shankar etc.He has interacted with Sam Deva Prakash, N. Prakash, Srinivasan, Shankar etc. The syndicate gave him pseudo name as "SHIVA" and he operated in that name. He was very well aware of his indulgence in illegal trafficking of Ketamine, a psychotropic substance covered under NDPS Act and consequences thereof and thereby committed an offence under Section 8(c), Sections 22(c), 23(c), 29 and 30 of the NDPS Act, 1985."

5. So far as the applicant Ganesh Kumar in Bail Application No. 2671 of 2023 is concerned, paragraph No.87 sets out the accusations against him. The same reads thus:-

> "87. The complainant submits that Ganesh Kumar Accused No.7 was involved in a criminal conspiracy for the illicit possession, export from India, transportation, warehousing and transip of Ketamine

> and Methaemphatamine at Faridabad. He had lent his personal documents for creating company in his name. He signed the document of Leave Licence agreement for Ganesh Enterprises and Ketamine was seized from its premises. Immediately after seizure on the instructions of Prathap he escaped to Thailand/Indonesia. He returned to India only after some time. He admittedly received money from C. Prathap and others in person and also in his account, He was very well aware of his indulgence in smuggling of NDPS substances and its consequences thereof. He aided and abetted in the illegal manufacture and export of psychotropic substances Ketamine. Hence he has committed an offence under Section 8(c), Sections 22(c), 23(c), 25, 29 and 30 of the NDPS Act, 1985."

6. The applicants were arrested on 11/01/2019 and now in custody for more than 4 years and 9 months. The period of incarceration as undertrials is long. The applicants undoubtedly have a right to a speedy trial. The trial is not likely to conclude anytime soon. Long incarceration is one of the factor that I will bear in mind alongwith other circumstances while considering whether to enlarge the applicants on bail or not having regard to the rigours of Section 37 of the NDPS Act. Long incarceration is thus one of the strong circumstance in favour of the applicant which I bear in mind in the facts and circumstances of the present case.

7. Learned counsel for the applicants placed reliance upon the decision of the Hon'ble Supreme Court in Rabi Prakash Vs. The State of Odisha[1]. Paragraph No.4 of the said decision reads thus:-

> "4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

8. Learned counsel Shri Sethna for the respondent-DRI vehemently opposed the application. It is submitted that merely because other accused are enlarged on bail does not automatically entitle the applicants to be released on bail as the nature of the accusations against the applicants and the role will have to be considered before such enlargement. It is submitted that in the present case, there are specific accusations against the applicants as can be seen from

1 Special Leave to Appeal (Crl.) No. 4169 of 2023

paragraph Nos. 86 and 87 quoted hereinabove. It is submitted that the applicants have an active role in the offence which is very serious and there are materials to indicate that they are actively involved with the crime syndicate. It is further submitted that considering the nature of the accusations, in the present case, at the highest the trial can be expedited.

9. Learned counsel Shri Sethna relied upon the following decisions, in support of his submission that bail cannot be granted only on the reason of long incarceration, as this Court has to get over the rigours of Section 37 of NDPS Act. The decisions relied are also, in support of the other submissions canvassed on behalf of the respondents.

1. Narcotics Control Bureau v. Mohit Agrawal[2]
2. Sheru v. Narcotics Control Bureau[3]
3. Mondal v. Narcotics Control Bureau[4]
4. Deepti Purtti v. The State (NCT of Delhi)[5]
5. Somnath Pal v. DRI[6]

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2 Criminal Appeal Nos. 1001-1002 of 2022 (Supreme Court-19.07.2022)
3 Criminal Appeal Nos. 585-586 of 2020 (Supreme Court-11.09.2020)
4 C.R.N No. 775 of 2021 (Calcutta High Court - 09.02.2022)
5 Bail Application No. 1541 of 2022 (Delhi High Court - 18.08.2022)
6 Bail Application No. 2549 of 2021 (Delhi High Court - 11.04.2022)

6. Bilal Ahmed Sheikh v. UT of J&K[7]

7. Anuj Kumar Upadhyay v. The State (NCT of Delhi)[8]

8. Union of India v. Ajay Kumar Singh @ Pappu[9]

9. Union of India v. Suleet Khata etc.[10]

10. Narcotics Control and Bureau through Zonal Director v. Bal Mukund Kumar Nirale @ Rahul & Anr.[11]

10. In support of his submission that when accusations are serious the trial could be expedited but bail should be rejected, learned counsel relied upon the following decisions.

1. Union of India (NCB) vs. Khalil Uddin[12]

2. Sabir Ali Mondal vs, State of West Bengal[13]

3. Ismail Isabuddin @, Ismail & Anr, vs. State of West Bengal & Anr.[14]

4. Gundurao Baburao Patil vs. Pankaj Raghuwanshi

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7 Bail Application No. 30 of 2022 (J&K High Court- 05.07.2022)
8 Bail Application No. 1150 of 2022 (Delhi High Court -15.11.2022)
9 Criminal Appeal No, 952 of 2023 (Supreme Court- 28.03.2023)
10 SLP (Criminal) Diary No. 39-4D 34587 of 2023 (Supreme Court - 27.09.2023)
11 SLP (Criminal) No.2521 of 2018 (Supreme Court – 03.10.2023)
12 Criminal Appeal Nos, 1841-1842 of 2022 (Supreme Court-21.10.2022)
13 SLP (Criminal) Diary Nos. 20289 of 2023 (Supreme Court-28.05.2023)
14 Special Leave to Appeal (Criminal) 10577 of 2022 (Supreme Court-15.02.2023)

& Anr.[15]

5. Dhananjay Braj Narayanlal Srivastava vs. Union of India[16]

6. Dhananjay Braj Narayanlal Srivastava vs. State of Maharashtra[17]

11. This Court will undoubtedly have to overcome the rigours of Section 37 of the NDPS Act and record a satisfaction in terms of the twin conditions before enlarging the applicant on bail. The Hon'ble Supreme Court in the case of Union of India Vs. Ajay Kumar Singh @ Pappu (supra) observed that in view of the provision of Section 37(1) of the NDPS Act, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics will be released on bail unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.

12. My attention is invited to the order dated 17/01/2023,

15 Criminal Bail Application No, 4012 of 2021 (Bombay High Court-04.01.2023)
16 Criminal Bail Application No. 2950 Of 2022 (Bombay High Court-31.01.2023)
17 Criminal Bail Application No. 748 of 2021 (Bombay High Court-03.03.2023)

passed in Bail Application No. 2756 of 2021, in respect of co-accused No.8, while enlarging the applicant therein on bail. The relevant portion of the order reads thus:-

> "4. The learned counsel for the applicant submits that special Court has released the main accused- Sham Devprakash and the co-accused- Jagdeeshan. It is submitted that allegations against the present applicant and co-accused Jagdeeshan are identical.
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> 5. I have perused the complaint filed by the DRI. The allegations against the co-accused Jagdeeshan and present applicant appears to be identical. Apart from it, the applicant is in jail for more than four years. There are no other criminal antecedents. Considering the overall facts and circumstances, I am inclined to release the applicants on bail."

13. I have carefully perused the accusations made against these applicants as well as other accused. So far as the applicant Nethaji Krishnaiah is concerned, it is alleged that the applicant aided and abetted the manufacture of Ketamine and is a part of a criminal conspiracy. The accusation is that he had recruited persons for the syndicate and sent them to Mumbai and Delhi for their activities. The applicant is the brother-in-law of accused No.1. The accused No.1 is in custody. The applicant received money in person from Srinivasan, Shankar etc. and he had interacted with Sam Deva Prakash (accused

No.2), N. Prakash, Srinivasan, Shankar etc. It is pertinent to note that Sam Deva Prakash (accused No.2), one of the prime accused of the syndicate, has been enlarged on bail by the trial Court.

14. So far as the applicant Ganesh Kumar is concerned, it is alleged that he had lent his personal documents for creating the company in his name. He signed the document of Leave Licence agreement for Ganesh Enterprises and ketamine was seized from its premises. The applicant, after the seizure, on instructions of accused No.1 - Prathap, had escaped to Thailand/Indonesia. However, he returned to India after some time. He received money from C. Prathap and others and was well aware of his indulgence in manufacturing of NDPS substance and its consequences thereof.

15. It is thus seen that the role assigned to the applicants is much lesser than that of some of the prime accused enlarged on bail, under whose instructions the applicants were working. The said orders are not challenged by the DRI. In my opinion, The applicants can claim parity in the matter of grant of bail with the co-accused who are enlarged on bail. There are no criminal antecedents reported against the applicants. One circumstance in favour of the applicants is the ground of long incarceration, as the applicants are in custody for more than 4 years and 9 months as undertrials without any possibility of trial concluding any time soon. The other circumstance is that the applicants are accused of a much lesser role than some of the prime accused who have been enlarged on bail. The applicants' claim for parity is justified. Taking an overall view of the matter, considering the facts and circumstances in the present case, I have no hesitation in forming a *prima facie* opinion that there are reasonable grounds for believing that the applicants may not be guilty of the offence. Considering that there are no criminal antecedents reported against the applicants, it is unlikely that the applicants will commit any offence while on bail. In any case, I propose to impose stringent conditions while enlarging the applicants on bail. The applicants are not appear to be a flight risk. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicants- Nethaji Krishnaiah and Ganesh Kumar in connection with Crime F.No.DRI/MZU/C/INT-116/2018 registered with DRI shall be released on bail on their furnishing P.R. Bond of Rs.1,00,000/- each with one or more solvent sureties each in the like amount.

(c) The applicants shall report to the DRI once in a week, every Monday of the week, between 11.00 a.m. and 1.00 p.m.

(d) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicants shall not tamper with evidence.

(e) On being released on bail, the applicants shall furnish their contact numbers and residential addresses to the DRI and shall keep them updated, in case there is any change.

(f) Except for the purpose of reporting to the DRI, the applicants shall not leave Raigad and Thane Districts after being released on bail, till the trial concludes.

(g) The applicants shall attend the trial regularly. The applicants shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(h) Any violation of the conditions, the respondents may apply for cancellation of bail which application shall be heard on priority.

16. The application is disposed of.

(M. S. KARNIK, J.)