

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

BAIL APPLICATION NO. 1253 OF 2022

Santosh Ramnaresh Prasad
Age : 42 Years, R/a : Santosh Nagar
Chawl, P.L. Lokhande Margaret,
Chembur, Mumbai – 89. ..Applicant

vs.

State of Maharashtra
[C.R. No. - 29/2021, dt.26.01.2021
of Wagle Estate Police Station] ...Respondent

Mr.Rajendra Bidkar – Advocate for Applicant.
Mr.S.R.Agarkar – APP for Respondent – State.
Mr.Sandeep Chavan – API – Thane City Crime Branch.

CORAM : S. M. MODAK, J.

DATED : 16TH JUNE 2023

P. C. :

1. Heard learned APP on the point of the documents available in support of their contention that the Applicant was in fact arrested on 25th January, 2021 near Daryasagar Hotel, Korum Mall, Thane (West). There is a reference in the trap panchnama on Page No.49 about taking into custody of Accused persons. They are Accused No.1 – Sameer Shaikh and Accused No.2 – present Applicant. It also contains the description of the articles seized from them. The

contraband article charas was found in the possession of Accused No.1 – Sameer. Whereas, the present Applicant was found with in all three articles. It consists of cash, Aadhar card and one mobile of itel company. Whereas, it was contended on behalf of the Applicant that in fact, the Applicant was not there at that spot. The timing of said panchanama is from 12.30 to 18 hours. On the last date, learned Advocate for the Applicant relied upon “call detail reports” [“CDRs”] and the tower location of this mobile handset.

2. From those documents, the learned Advocate for the Applicant wants the Court to draw an inference that at the material time, he was at Chembur. He relied upon the following entries shown in the CDRs. They are as follows :-

Call Date	Call Time	First Call ID	Last Call ID
25-01-2021	20:01:27	‘4058740020413’	‘4058740020413’
25-01-2021	20:01:27	‘4058740020413’	‘4058740020413’
25-01-2021	20:01:26	‘4058740020413’	‘4058740020413’
25-01-2021	19:58:04	‘405874021ce30’	‘405874021ce30’
25-01-2021	18:38:54	‘4058740020410’	‘4058740020410’

Whereas, the tower location for the cell i.d., 4058740020410 is shown at Popular House, PI Lokhande Marg, near Chembur.

3. As against this, learned APP submitted that when the CDR is

perused of the mobile seized from the Applicant, there is no call details history for timings 11.01.26 to 18.38.54 of 25th January, 2021. He wants to suggest that at the time of seizure panchnama, the Applicant was verh much at Thane and the cell i.d., for this period does not show location at Chembur.

4. Learned Advocate for the Applicant tried to explain that during that period, he has not received any call that is why, those details are not there in CDR and that is why, corresponding tower location is not shown. According to him, only when call is received/dialed, then only the mobile companies can show the tower location.

5. Learned APP submitted that the tower location at 18.38.54 on 25th January, 2021 and afterwards is shown at Chembur, because, after the arrest, the Investigating Officer had gone there along with the Applicant and along with his mobile.

6. To counter this submission, learned Advocate for the Applicant read over few of the statements of the members of raiding party. They are on Page No.102, 107. Police Inspector Krushna Tikaram Kokani and Police Sub Inspector Dattatraya Balu Sarak in their statements dated 18th February, 2021 and 19th February, 2021 have mentioned that after the arrest of Accused No.1, they had gone to

Mumbai along with the Accused No.1. He wants to submit that if at all, the present Applicant was arrested at Thane and ie was taken to Chembur as today argued by larned A.PP., these statements must have referred to taking the Applicant to Chembur as it is contended today, during oral arguments.

7. Learned APP submitted that this is not the stage to go through the materials in depth, but Court has to take prima facie view. In depth enquiry can be done at the time of trial.

8. It is true that in depth enquiry cannot be done at the bail stage but Court has to take prima facie view after reading the evidence as it is. If the reference about taking the Applicant to Chembur after the arrest is not there in the Police statement, it is not there.

9. So, I feel that not mentioning the tower location at Thane in the CDR and mentioning tower location of the Applicant at Chembur after 18.38 hours creates a doubt that whether the Applicant really arrested at Thane.

10. These are my prima facie observations. If it is so, then rigor under Section 37 of Narcotic Drugs and Psychotropic Substances Act, 1985 ["NDPS Act"] would not be applicable and the Applicant deserves to be released on bail. Hence, order :-

O R D E R

- (i) Application is allowed.
- (ii) Applicant Santosh Ramnaresh Prasad be released on bail in connection with C.R.No.29 of 2021 registered with Wagle Estate Police Station–Thane for the offences punishable under Sections 8(c), 20(B)(ii)(c) and 29 of NDPS Act, on furnishing personal bond and surety bond of Rs.50,000/-.
- (iii) Applicant is directed to attend the Wagle Estate Police Station – Thane on Monday from 10.00 to 12.00 noon for two years.
- (iv) Applicant to attend the trial punctually.
- (v) In case of breach of any of the conditions, the bail of the Applicant is liable to be cancelled after notice.

11. These are my *prima facie* observations. Let the learned trial Court need not be influenced by them.

12. Application is disposed of in the aforesaid terms.

13. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]