

Digitally signed by
SATISH RAMCHANDRA
SANGAR

Date: 2023.07.13
14:39:16 +0530

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

CRIMINAL BAIL APPLICATION NO. 1589 OF 2021

Sanjay Ravindra Shukla

Age : 37 Years, Occu. : Business,

Resident at : Flat No.7, Mini Apartment,

Krantinagar, J. B. Nagar,

Near Durga Mandir, Andheri East,

Mumbai : 400 059.

...Applicant

vs.

State of Maharashtra,

[At the instance of Kasarvadvali

Police Station : C.R. No.26 of 2018].

...Respondent

**ALONG WITH
CRIMINAL BAIL APPLICATION NO. 1011 OF 2022**

Deepak Bhogilal Kothari

Age : 52 Years, Occu. : Business,

Resident at : B-11, DhC Road,

Panchvati, Ahmedabad

...Applicant

vs.

The State of Maharashtra,

[Anti Extortion Cell, Thane

C.R. No. II 26/18 of Kasarwadwadi

Police Station dated 25/09/2018]

...Respondent

**ALONG WITH
CRIMINAL BAIL APPLICATION NO. 1840 OF 2021**

Mayur Pravin Mehta

Age : 48 Years, Occu. : Service,

Resident at : Building No.26,

Second Fanaswadi, 4th Floor,

Satish Sangar

Dadishet Agyari Lane, Chirabajar,
Mumbai : 400 002.

...Applicant

vs.

The State of Maharashtra,
[At the instance of Kasarvadavli
Police Station]

...Respondent

Mr.Advait Tamhankar a/w Mr.Taraq Sayed and Ms.Ashwini Achari–
Advocates for Applicant in Criminal Bail Application No.1589 of
2021.

Mr.Ayaz Khan a/w Mr.Rajendra S. Bidkar–Advocates for Applicant in
Criminal Bail Application No.1011 of 2022.

Mr.Abad Ponda–Senior Advocate a/w Mr.Bhomesh Bellam–Advocate
for Applicant in Criminal Bail Application No.1840 of 2021.

Mr. H. J. Dedhia–APP for the Respondent-State.

CORAM : S. M. MODAK, J.

RESERVED ON : 30TH MARCH, 2023

PRONOUNCED ON : 13TH JULY, 2023

P. C. :-

1. Heard learned Senior Advocate Shri.Abad Ponda, learned
Advocate Shri.Taraq Sayed, learned Advocate Shri.Ayaz Khan for
respective Applicants and learned APP Shri.H.J.Dedhia.

2. All of them have prayed for bail on two grounds. One is
lack of materials and second is delay in conducting the trial. All of
them are charge-sheeted for the offences punishable under Sections

8, 21(c), 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 [“NDPS Act”] as well as Section 201 read with 34 of Indian Penal Code, 1860 [“IPC”]. In all, there are two charge-sheets. First charge-sheet is against 4 Accused persons. Whereas, few of them were shown as absconding. Whereas, Second charge-sheet is filed against others. Some of them were found in possession of ‘*contraband ‘tramadol tablets’*. Whereas, all of them were charged for entering conspiracy right from procuring raw materials, hiring a company, who can manufacture those tablets, transporting those tablets, financing the manufacturing activity.

3. The Applicant Mayur Pravin Mehta who is Accused No.1 was found on 24th September, 2018 near Bramhand Society, Thane (West) possessing ‘*tramadol tablets*’ of commercial quantity. Whereas, the Applicant Deepak Bhogilal Kothari who is Accused No.4 has financed the company by name *Ravindra Impex* by transferring the amount to their account. Wanted Accused–Nilesh Ravindranath Shukla is a proprietor of said *Ravindra Impex*. Said *Ravindra Impex* in turn transferred the amount to *U.S.Pharma Services* and *Noble Drugs* for the purpose of purchase of raw materials. There is further allegation that this Deepak Kothari

destroyed some of the contraband tablets and at his instance, reminiscence of burnt '*tramadol tablets*' were seized.

4. Whereas, the Applicant Sanjay Ravindra Shukla is the Accused who is charge-sheeted subsequently and in the first charge-sheet, he is shown as a witness. In that charge-sheet, Nilesh Shukla who is a brother of this Applicant was shown as absconding Accused. At the instance of this Applicant, '*tramadol tablets*' were seized from Innova Car on 5th February, 2019.

5. All these Applicants are behind bar since 2018/2019 and charge is not framed at least upto the date of hearing of these Applications. According to the respective Counsels, bar under Section 37 of NDPS Act will not come into play and Applicants are not guilty of offences charged. Their respective Counsels have made the submissions which is noted hereinafter.

Involvement of Accused No.1 – Mayur Pravin Mehta
[Bail Application No. 1840 of 2021]

6. Mr.Ponda, learned Senior Counsel, made a submission that in fact, his client was in custody of the Police attached to Anti-Extortion Cell of Crime Branch – Thane City earlier to 24th September, 2018. Contraband seized from the possession of Accused

– Mayur Mehta was supposed to be delivered to the Accused No.5 – Sanjay Shukla. He is also called by name ‘*Radhe Radhe*’. To buttress this submission, he relied upon the following circumstances / documents :-

- (i) He was in custody of Anti-Extortion Cell – Thane from 21st September to 24th September, 2018.
- (ii) Call Detail Reports [“CDRs”] for this period shows the i.d. location in and around Thane.
- (iii) Those CDRs were suppressed by the Prosecution.
- (iv) In spite of giving directions by this Court on 25th August, 2022, 14th October, 2022, 17th September, 2022, 13th December, 2022, those CDRs were not produced and this circumstance falsifies the Prosecution case.
- (v) Failure to file an affidavit by the Prosecution in spite of directions dated 14th October, 2022. The direction was given to file an affidavit on 13th December, 2022.
- (vi) Ultimately, on 3rd March, 2023, two reports about CDR details were produced.
- (vii) Whats-app message sent by wife of the Applicant to the Applicant on 23rd September, 2018 thereby inquiring about his whereabouts and also communicating that if the Applicant will not answer, she will file a missing complaint to the Police.

- (viii) Reply given by the Applicant to the wife 'Aec thane'.
(Page No.31).
- (ix) Submission of the fact of not filing an affidavit by learned APP Mr.Dedhia (Para No.1 of the order dated 24th March, 2023).
- (x) The copies of CDRs collected by the Applicant for Applicant's mobile no. 9322877492 at Exhibit-B. My attention is invited to the entries on Page No.26 which records that on 21st September, 2018 and 22nd September, 2018, the i.d. location for the entries dated 23rd September, 2018 is near 1979, Old Pune Rd, Kharkar Alley, Thane West, Thane, Maharashtra 400601.

Involvement of Accused No.4 – Deepak Bhogilal Kothari
[Bail Application No. 1011 of 2022]

Submission

- (i) The Applicant Deepak Kothari is arrested on 25th September, 2018 at about 18.30 hours. It is mentioned in a special report given by Police Inspector–Anti–Extortion Cell to Assistant Police Commissioner dated 25th September, 2018 (Page No.106).
- (ii) In the '*Nokari Batavada Batoda*' statement dated 24th

September, 2018 of Anti-Extortion Cell, there is mention that some of the Police party went to Gujarat for investigation papers (Page No.109).

(iii) Deepak Kothari took up by the team for questioning on 24th September, 2018 from Ahmedabad. (Page No.786-A). The contention is if the raiding party has arrested Accused No.1 on 24th September, 2018 at 7.00 p.m., how they can arrest the present Applicant at about 18.15 hours at Gujarat.

(iv) There is a legal notice sent by Applicant Deepak Kothari to *Ravindra Impex Pvt. Ltd.*, through its director Nilesh Shukla (Page No.794) under Section 138 of the *Negotiable Instruments Act, 1881* [*“NI Act”*].

Involvement of Deepak Bhogilal Kothari

7. Prominent allegation against the Applicant-Deepak Kothari is that he has invested the money in manufacturing ‘*tramadol tablets*’ and he has financed the proprietary concern *Ravindra Impex* of which Nilesh Shukla is the proprietor. After getting knowledge about arrest of Accused – Mayur Mehta, he has destroyed the ‘*tramadol tablets*’. There are statements and

supporting materials collected during investigation. They are as follows :-

- (a) Girish Mantri of Industrial Estate – Madhya Pradesh is the owner of one '*Noble Drugs*' possessing of manufacturing licence and having factory shed at Indore. For some reasons, he has closed the manufacturing activity.
- (b) He was contacted by Accused Santosh Pandey who runs the business in the name and style as '*U.S.Pharma*'. He has taken the factory premises on rent from said Girish jaykishanji Mantri after entering into an agreement.
- (c) The Accused Nilesh Shukla of *Ravindra Impex* gave an order to Accused Santosh Pandey to manufacture the '*tramadol tablets*'. The Accused Santosh Pandey procured raw materials from *Akshar Pharmaceuticals*.
- (d) Accused Jignesh Patel and Deepak Kothari transferred the amount in Kotak Bank belonging to '*U.S.Pharma*'.
- (e) There are meetings conducted in the Office of *Ravindra Impex* at Andheri thereby discussing a plan how to procure an amount, how to manufacture the tablets, how to transport it and how do export it.
- (f) They are attended by the Accused – Nilesh, Romel

Vaz (bailed out Accused), Deepak Kothari, Santosh Pandey, Jignesh Patel and Mayur Mehta.

- (g) Santosh Pandey also procured raw materials from A.S.Joshi and Company – Goregaon. One of the labour working with Santosh Pandey is Aasaram Dhakad during 11th August, 2018 to 22nd August, 2018. Accused Santosh Pandey has forwarded master formula to Food and Drug Administration – Madhya Pradesh on 21st August, 2008 but could not obtain permission from Madhya Pradesh Government. Accused Santosh Pandey threatened the witness Girish Mantri to allow him to take the tablets out of factory.

Involvement of Accused Applicant – Sanjay Shukla
[Bail Application No. 1589 of 2021]

8. He is brother of wanted Accused – Nilesh Shukla who is proprietor of *Ravindra Impex*. Said Nilesh is having export licence for drugs. He has participated in the conspiracy along with Accused Romel Vaz, Accused – Deepak Kothari, Accused – Santosh Pandey and other Accused in manufacturing and transporting and planning for exporting the ‘*tramadol tablets*’. Accused Nilesh Shukla is having Office at Andheri and there are meetings conducted in that Office of

all the conspirators. Applicant Sanjay Shukla attended those meetings.

9. In fact, in the first charge-sheet, he was a witness and his statement is recorded on 11th December, 2018 and subsequently, he is made an Accused person.

10. There are statements of the watchman of Apollo Industries. Within its precincts *Ravindra Impex* was having office in Gala Nos. 33 and 34. Nilesh Shukla is the owner of those premises.

11. The tablets seized from Mayur Mehta were in fact dispatched through Navmit Cargo Expert Pvt. Ltd., and in fact, they were meant for Accused Sanjay Shukla. But, prior to delivery, they were intercepted by the Anti-Extortion Cell.

12. There is memorandum statement of Accused – Sanjay Shukla as per which, tablets are seized from the car. He opened the car with the help of key handed over by his wife.

13. Even though his brother Nilesh was arrested in a murder case on 26th August, 2018, the Anti Extortion Cell have deliberately shown him as a wanted Accused. In fact, the tablets are manufactured for export but they could not be exported and hence, dispatched for circulation in local market and finally, there was a

Notification issued by the (Central Government dated 26th April, 2018 thereby banning the use of '*tramadol tablet*'). There is further Notification dated 13th July, 2018 thereby notifying that after expiry of period of 120 days, the '*tramadol*' shall be covered under the provisions of the Notification dated 26th April, 2018. The Call Detail Reports about mobiles of all these Accused persons.

Consideration

14. All the respective Counsels have also relied upon various judgments. They are on the point of grant of bail and in which cases, the bar under Section 37 of NDPS Act is lifted and if there is a delay in conduct of trial, how the bar is lifted under Section 37 of NDPS Act. The prominent judgments are as follows :-

- (i) Chitta Biswas Alias Subhas V/s. The State of West Bengal¹
- (ii) Nitish Adhikary @ Bapan V/s. The State of West Bengal²
- (iii) Mohammad Salman Hanif Shaikh V/s. The State of Gujarat³
- (iv) Jitendra Jain V/s. NCB & Anr.⁴
- (v) Gopal Krishna Patra @ Gopalrusma V/s. Union of

¹ Criminal Appeal No(s).245 of 2020 : 7th February, 2020 : Supreme Court

² Special Leave to Appeal (Crl.) No(s).5769 of 2022 : 1st August, 2022 : Supreme Court

³ Special Leave to Appeal (Crl.) No(s).5530 of 2022 : 22nd August, 2022 : Supreme Court

⁴ Special Leave to Appeal (Crl.) No.8900 of 2022 : 16th December, 2022 : Supreme Court

India⁵

(vi) Amit Singh Moni V/s. State of Himachal Pradesh⁶

(vii) Balvir Ram V/s. State of Punjab⁷

(viii) Dheeraj Kumar Shukla V/s. The State of Uttar Pradesh⁸

(ix) Junaid V/s. The State of Gujarat⁹

(x) Biswajit Mondal @ Biswajit Mandal V/s. The State of West Bengal¹⁰

(xi) Gokul Mali V/s. The State of Madhya Pradesh¹¹

15. I do not want to overburden this order by quoting each and every order referred by respective Advocates on the point of right to speedy trial and grant of bail in offences under special enactment.

16. After hearing them and after going through the papers, I am inclined to grant them bail. I am convinced that bar under Section 37 of NDPS Act will not be applicable. Furthermore, when there is undue delay in conducting trial and '*right to speedy trial*' is breached, then in such a case, bar under Section 37 of NDPS Act is lifted. This view is reiterated in case of ***Mohd Muslim @ Hussain V/s.***

5 Criminal Appeal No.1169 of 2022 : 5th August, 2022 : Supreme Court

6 Criminal Appeal No.668 of 2020 : 12th October, 2020 : Supreme Court

7 CRM-M-31856-2020 (O&M) : Punjab and Haryana High Court : 29th November, 2022

8 Special Leave to Appeal (Crl.) No(s).6690 of 2022 : 25th January, 2023 : Supreme Court

9 Special Leave to Appeal (Crl.) No(s). 11608 of 2022 : 13th February, 2023 : Supreme Court

10 Criminal Appeal No.450 of 2023 : 14th February, 2023 : Supreme Court

11 Criminal Appeal No. /2023 (arising out of SLP (Crl.) No(s).566 of 2023 : Supreme Court

*Staqtte (NCT of Delhi)*¹² by Hon'ble Supreme Court.

17. When Applicant Mayur pleads that he was in custody of Anti-Extortion Cell much earlier to date of his arrest on 24th September, 2018, his arrest becomes doubtful. Applicant Mayur has also produced documents in the form of :-

(a) What's app message sent to the Applicant by his wife on 23rd September, 2018 thereby inquiring with him about his whereabouts and reply given by the Applicant as 'Aec thane'

and

(b) CDR showing his location id and around Kharkar Alley, Old Pune Rd, Thane (West) on 22nd September, 2018.

In fact, the Court could have discarded these CDRs, but inspite of directions given by this Court, to file relevant CDRs, Prosecution fails to file an affidavit. For these reasons, there is serious doubt about arrest of Applicant – Mayur on 24th September, 2018 and consequent seizure.

18. Few of the grounds taken by Mr.Khan on behalf of Applicant – Deepak appealed to my conscience. Whereas, few other grounds don't appeal to my conscience. Few of the raiding party members went to Ahmedabad on 24th September, 2018 (Page

¹² AIR 2023 SC 1648

No.109, 783-789) whereas, he is shown arrested on 25th September, 2018. Furthermore, there is reliance on two memorandum statements ; one by Accused – Santosh Pandey dated 28th September, 2018 (Page No.193). He has shown the place of Nobel Drugs at Indore where tablets are manufactured. There is memorandum statement given by Applicant Deepak on 28th September, 2018 (Page No.221). He has shown the place where he has burnt the tablets at Mehsana Gujrath. There is one facsimile seal impression on forwarding letter dated 4th October, 2018 (Page No.120) sent to Chemical Analyzer. Contention is when above 2 memorandum statements and panchnama were executed at 2 distant places, how it can be done with one facsimile seal.

19. I am not impressed by above grounds. It can be decided only after recording evidence. However, one ground which appealed to my conscience and it is about not recording memorandum statement at Thane on 26th September, 2018 (Page No.219), but it was recorded on 28th September, 2018 at Vishagar Police Station – Mehsana (Page No.221). Senior Police Inspector – Shri.Sharma vide his letter dated 26th September, 2018 directed Police Inspector – AEC to visit and confirm the place of burning of tablets. Contention is

when the Applicant has disclosed about the said information on 26th September, 2018 at Thane only, why it was recorded at Mehsana on 28th September, 2018. I find merit in this contention.

20. It is true that there are documents showing transfer of money by this Applicant in the account of Ravindra Impex run by Accused – Nilesh Shukla. As against this, Applicant – Deepak relied upon the theory of giving friendly loan to Nilesh Shukla and it is acknowledged vide letter dated 18th August, 2018 (Page No.791). Furthermore, the Applicant relied upon notice under Section 138 of NI Act issued by him to Ravindra Impex dated 22nd February, 2018 (Page No.794). But, this is after arrest. But, this theory can be tested during trial only.

21. Prosecution has filed an affidavit on reply to oppose the bail of Applicant – Sanjay Shukla. It is contended that when his brother Nilesh is arrested on 10th January, 2019, role of Applicant Sanjay is disclosed. In fact, he is also called as '*Radhe Radhe*'. In fact, when Applicant – Mayur is arrested, it was revealed that the tablets were to be delivered to the person by name '*Radhe Radhe*'. It was further revealed that Applicant Sanjay has suppressed his identity as '*Radhe Radhe*'. But, when he was arrested, 2 visiting cards of that

description were found.

22. It is true that this Applicant – Sanjay was made as a witness as per first charge-sheet. He was made as an Accused later on. But, it is important to note that at his instance, tablets were found from his Innova car. Sometime, it happens that involvement may be disclosed later on. As there is recovery, I am not impressed by the argument that earlier, he was shown as a witness. However, I am inclined to grant him bail on account of delayed trial.

23. There is evidence of CDR relied upon against all of them to show *interse* conversation of their location. I am not impressed by the same.

24. All of them are behind bar since 2018/2019. Why for charge is not framed against them (at least till hearing these Applications. Further, status is not known). Earlier, there was only one Judge assigned with NDPS cases. Ultimately, it is the responsibility of the State / High Court Administration to depute sufficient number of Judges. The Applicants cannot be blamed. If there are stringent provisions for bail, there is additional responsibility to try them at the earliest. On one hand, you can't deny them bail and on the other hand, do not try them. Five years is

sufficient long period for the Applicants to wait for their turn. In such circumstances, bar under Section 37 of NDPS Act is not applicable. So, they deserve to be released on bail.

25. From the above discussion, I am inclined to grant bail to all of them. Hence, order :-

O R D E R

- (i) Applications are allowed.
- (ii) Applicants (i) Sanjay Ravindra Shukla ; (ii) Deepak Bhogilal Kothari and ; (iii) Mayur Pravin Mehta be released on bail in connection with C.R. No. 26 of 2018 registered with Kasarvadavali Police Station - Thane for the offences punishable under Sections 8, 21(c), 22(c) of NDPS Act, 1985 and Section 201 read with 34 of IPC, on furnishing personal bond and surety bond of Rs.1,00,000/- (Rupees One Lakh).
- (iii) Applicants not to threaten the Prosecution witnesses or to allure them in any manner.
- (iv) Applicants to attend the trial punctually.
- (v) Applicants not to leave India without permission of the trial Court.
- (iv) In case of breach of any of the conditions, the bail of the Applicants are liable to be cancelled after notice.

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

27. Applications are disposed of in the aforesaid terms.

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

[S. M. MODAK, J.]