

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

ANTICIPATORY BAIL APPLICATION NO. 1012 OF 2023

Mr. Akshay Sivan s/o. Sivan	... Applicant
v/s.	
The Union of India	 Respondent

Mr. Umesh Borade for the Applicant.
Ms. A.A. Takalkar, APP for the State.
Ms. Manisha Jagtap a/w. Mr. Karan Rasane for NCB.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 18th APRIL, 2023.

P. C. :-

1. This is an Application under section 438 of Cr.PC. filed by the aforesaid Applicant apprehending his arrest in C.R.No.18/2022 registered with Narcotic Control Bureau, Mumbai for offences punishable under sections 8(c), 21(b), 22(c), 23(c), 27, 28 and 29 of Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985.

2. Heard learned counsel for the Applicant. He submits that there is no prima facie material to show the involvement of the Applicant in the aforesaid crime. He submits that the Applicant is ready to abide by the terms and conditions and this is a fit case to exercise discretion under section 438 of Cr.PC.

3. Learned counsel for the Respondent-NCB submits that the drugs of commercial quantity were recovered from the possession of the accused no.1 and prima facie reveals that the Applicant is the master mind in supply of drugs. She submits that the material on record shows the involvement of the Applicant and in view of section 37 of NDPS Act, the Applicant is not entitled for pre-arrest bail. Reliance is placed on the decision of the Apex Court in *Satpal Singh v/s. State of Punjab 2018) 13 SCC 813* and *State of Kerala, etc. v/s. Rajesh etc. in Criminal Appeal Nos.154-157 of 2020*.

4. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. It is the case of the Respondent that on the basis of specific information, the NCB officers conducted raid at Import Packets, Customs Examination Area, Foreign Post Office, Ballard Estate, Mumbai and seized 80 gms of pink coloured triangular ecstasy tablet, 24 gms of white coloured rectangular ecstasy tablets, 25 gms of white colour substance purported to be Cocaine and 100 LSD Blots (weighing 02 gms).

6. The contraband substance recovered is of commercial quantity. In ***State of Kerala*** (supra), the Hon'ble Supreme Court while considering the scope of Section 37 of NDPS Act, has held that the expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

7. In the instant case, the accused no.1 who was involved in the said crime has been taken into custody. In the course of the interrogation, the accused no.1 has disclosed the name of the Applicant herein as the main conspirator of the seized drugs in Goa. His statement reveals that the Applicant herein is involved in supply of various narcotic and contraband drugs in Goa and that he has purchased the same from foreign country and the Applicant controls sale and distribution of drugs in Goa.

8. The statement of the co-accused though not admissible in evidence, the same can be considered for the purpose of investigation.

At this stage, it cannot be said with certainty that the Applicant is not involved in the aforesaid crime. The learned Special Judge has taken into consideration these facts and dismissed the application by order dated 09/12/2022.

9. The Applicant has not satisfied the twin test under section 37 of NDPS Act. Considering the gravity of the offence, I am not inclined to exercise discretion under section 438 of Cr.P.C. in favour of the Applicant. Hence, the Application is dismissed.

PREETI
H JAYANI

(SMT. ANUJA PRABHUDESSAI, J.)

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