

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1486 OF 2023

Zaid Zahir Rana .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr. Ayaz Khan for the applicant.
Ms.Aruna S Pai, PP with Mr.Y.M. Nakhwa, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 30th OCTOBER, 2023

P.C:-

1 The applicant, a young man, aged 23 years, came to be arrested by the NCB on 9/4/2021 in connection with NCB/BZU/CR-35/2021 for violating the provisions of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'). He presently faces a charge u/s.20(b)(ii)(A), 22(c), 23(c), 28 and 29 of the NDPS Act.

By the present application, he seek his release on bail by claiming innocence on the ground that the charges levelled against him are without any foundation and the discrepancy in the case of the prosecution which surfaces through the charge-sheet make its case, doubtful, and in any case, since the co-accused in the subject C.R are already released on bail, he deserve

a similar treatment. His incarceration for over two years, with no chance of timely completion of trial, is also additional ground, pressed into service.

It is to be noted that before filing of this application, the applicant had approached this Court, seeking a similar relief, however, on expressing disinclination to entertain the application, on its consideration, the same was withdrawn on 9/11/2022. Thereafter, once again, a second application was moved, which met with the same fate, as I specifically recorded that the second Bail Application is not a review, and hence on earlier occasion, when the application was filed, the material which was pressed into service while hearing the second application was argued to have not been placed before the Court.

As a consequence, even the second Bail Application was dismissed on 28/3/2023.

Being aggrieved by this order, the applicant approached the Apex Court and it was expressed by their Lordships that the applications filed by the applicant securing his release on bail was never heard on merits by the High Court, and while setting aside the order dated 28/3/2023 on merit, the matter was remitted to the High Court for consideration of the application on merits, without being influenced by the withdrawal of the first application and dismissal of the second one.

That is how the application is placed before me once again, with a direction to decide the same on merits.

2 I have heard Mr.Ayaz Khan, learned counsel for the applicant and Ms.Pai, counsel for NCB for respondent no.1. The State being a formal party is represented by the learned APP.

3 The case of the prosecution could be briefly summarized as under :-

“(a) That on 08/04/2021 a secret information was received by IO Kiran Babu that one person namely Zaid Rana is dealing/selling of LSD, Ganja & DAB from his house at Room No. B-203, Evershine Green, Oshiwara, Andheri (W), Mumbai 400102. The said information was reduced into writing and forwarded to Superintendent & Zonal Director i.e. Sameer Wankhede. They directed to form a team and conduct raid under IO Ashish Ranjan.

b) That the officers reached the spot and thereafter panchas were arranged at around 1020 hours. That the Panch witnesses were intimated about the information that the present applicant is dealing/ selling LSD and Ganja from his abovementioned address.

c) That on reaching the house, Applicant /Accused No. 2 Zaid Rana opened the door and he was appraised of the purpose of visit of officers along with the Panchas. He was appraised of his legal right under the provisions of NDPS Act in writing as well as orally for which the Applicant declined in writing.

d) That on enquiry with the Applicant regarding the concealment of any contraband, that the Applicant has allegedly stated that he had kept 70 blots of LSD in his brown wallet and he voluntarily handed over the said wallet to IO Ashish Ranjan. That few documents were also being found in the said wallet.

e) The officer kept 70 blots of LSD weighing 1.32 gms in a transparent polythene bag. That the said contraband was kept in transparent polythene pouch. The same was zip locked and placed in a white colour envelope on which the details of the contents therein were written and marked as 'M' and pasted shut and scaled with NCB seal no. 03. That on the said envelope Panchas, Applicant and seizing office put their dated signature.

f) It is alleged that on further enquiry with the Applicant regarding contraband it is alleged that Applicant has pointed that he has Ganja and psychotropic capsule and DAB in his scooty bearing registration no. MH-02-EY- 1278. That the said scooty was searched and officers recovered green leafy substance in transparent poly bag. The said leafy substance was tested on field testing kit and the same tested positive for Ganja. The weight of the said substance was 22 gms.

g) That the said contraband was kept in transparent polythene pouch. The same was zip locked and placed in a brown colour envelope on which the details of the contents therein were written and marked as 'M-1' and pasted shut and sealed with NCB seal no. 03. That on the said envelope Panchas, Applicant and seizing officer put their dated signature.

h) That on further search one capsule was found in a transparent poly bag alleged to be psychotropic substance. The poly bag was kept in a white envelope on which details of substance therein was written and marked as 'M-2' and pasted shut and sealed with NCB seal no. 03. That on the said envelope Panchas, Applicant and seizing office put their dates signature.

i) That a notice u/s.67 of the NDPS Act was issued to the Applicant on the spot with the direction to remain present before the Investigating Officer in NCB/MZU/CR-35/2021. That the panchnama in respect of the above seizure was completed at 11.40 hours in the premises of Applicant.

j) That the seized property from the applicant's premises were deposited in the godown on 08/04/2021 at 23.15 hours. That Seizing Officer Ashish Ranjan has submitted search and seizure report to the superior officer”

4 During the course of investigation, the statement of the applicant came to be recorded on 9/4/2021 and he was shown to be arrested at 2.00 p.m. His second statement was recorded on 11/4/2021. It is on the basis of the information provided by the present applicant, that another accused Shubham Savardekar (Accused no.4) was apprehended and it is the case of the

prosecution that his search led to recovery of 25 gms of *charas*, and even his statement was recorded on 9/4/2021.

52A proceedings under the NDPS Act were conducted before the Metropolitan Magistrate, Mumbai on 8/7/2021 and during the course of investigation, statement of various witnesses were recorded and on completion of investigation, charge-sheet came to be filed against four accused persons, the applicant having been arraigned as accused no.2.

5 The entire material included in the charge-sheet on being collected by the Investigating Officer, as per Mr.Khan, is full of doubts and according to him, the benefit of the same must go to the accused i.e. the applicant and this must necessarily be looked into at this stage rather than postponing it at the time of trial, as his incarceration in the wake of the said material according to him, is unwarranted.

The blatant lacunae in the case of the prosecution, according to Mr.Khan, is the procedure adopted and he would submit that the information note in respect of the applicant being shown as a 'suspect' was prepared on 8/4/2021, which record that upon the secret information being received from a reliable source that a person by name 'Zahid Rana' is involved in dealing/selling of LSD Ganja and DAB from his house in Evershine Green, Oshiwara, Andheri (W), Mumbai, Mr.K. Kiran Babu, the Intelligence Officer, NCB, Indore Zonal Unit, forwarded the

information note and accordingly, Ashish Ranjan was authorized to constitute a team to take necessary action as per law.

Inviting my attention to the panchnama prepared on 8/4/2021, pursuant to the information received, Mr.Khan would submit that the NCB team along with the panchas reached at the house of the applicant at about 10.20 hours and a 19 year old boy i.e. the applicant, was given the background and the purpose of the visit, which was followed by a house search.

As far as the compliance of Section 50 is concerned, the panchnama has recorded as under :-

“Then Ashish Ranjan Prasad, IO, explained Zaid Rana about the Section-59 of NDPS Act verbally and also in writing, that he has legal right to be searched before any nearest Gazetted Officer or Magistrate under section-50 of NDPS Act in which he politely declined verbally and also in writing. He says that he understood the offer given to him u/s.50 of NDPS Act and he doesn't with to call any Gazetted Officer or Magistrate for his personnel search and any officer of NCB can conduct his personal search. He willingly agreed to be personnel search before the Officers.

6 His search led to 70 blots of M.D in his brown wallet which was kept in the left pocket of the trouser and it was handed over to the Investigating Officer. Certain other documents were also recovered from the wallet which included the credit cards, pan card, Aadhar card etc. The seized contraband was confirmed to be LSD.

7 The blots on being counted were also weighed and placed in transparent polythene pouch which was zip lock and placed in one white coloured paper envelope where the details of the contents were written and it was marked as 'm'. According to the panchnama, the further search of a Honda Activa of the accused led to green leafy substance found in one transparent poly bag and this substance was tested with Drug Detection kit which gave positive result as presence of *ganja*.

8 In respect of the panchnama, Mr.Khan would advance two arguments to show the improbability of the entire exercise; the first being mention of the C.R. number of the NCB case at the end of the panchnama, when the notice u/s.67(c) was issued to the applicant on the spot with a direction to represent himself to submit his say, as regards the alleged recoveries. Apart from this, by inviting my attention to the last page of the panchnama, which has a blank space, from the last line of the script of the panchnama and where the concerned officers and the accused have put his signature and according to Mr.Khan, this creates a serious doubt, as in normal circumstances, the signatures would have been affixed where the writing ends. Apart from this, it is also pointed out to me that notice u/s.67 of the NDPS Act, specifically state as under :-

“In exercise of powers conferred under section 67 of the NDPS Act, I hereby inform you that during the investigatoin of case no.35/2021 registered at NCB, Mumbai Zonal Unit in respect of seizure of total 70 blot LSD, 22 grams ganja, psychotropic substance at R.No.B-

203, Evershine Green, Oshiwara on 8/4/2021. It is revealed that there are reasonable grounds to question you to ascertain facts and circumstances from you, in relation to the present investigation”.

9 Mr.Khan would also focus his attention on the non-compliance of Section 50 of the NDPS Act which is an imperative mandate and by inviting my attention to page 65, which is construed to be a voluntary statement on behalf of the applicant that he would not like to be searched by any Officer of NCB, but he was apprised of the right to be searched by Gazetted officer or Magistrate, Mr.Khan would submit that this is no intimation and secondly, there is no signature of any panch on the said document and even notice issued under Section 50, do not bear the signature of the panch.

 These discrepancies which are writ large, is the ground on which Mr.Khan would pray for release of the applicant. Another lacunae in the case of the prosecution to which Mr.Khan would point out his finger at, is about packing of the contraband. According to him, the panchnama reflects 70 blots of LSD procured from the wallet of the applicant being collected in a transparent zip lock polythene pouch and thereafter put in a white coloured envelope marked as ‘M’. In the statement of the applicant, there is reference to a brown colour envelope and when the LSD was produced before the Magistrate, it was contained in white colour envelope and after opening and checking, the blots, the same was re-packed in the same plastic

pouch and placed in a brown envelope and marked as 'LS'. This, according to Mr.Khan makes the case of the prosecution, doubtful.

10 Ms.Pai, learned Special Counsel for NCB has offered explanation to all the aspects highlighted by Mr.Khan and it is her specific statement that these are all the aspects to be considered during the course of trial, as it is not permissible to have a mini trial at this stage.

She do not express any surprise over the procedure that is followed while the case number is found to be scribed on the panchnama itself. By relying upon the affidavit of Ashish Ranjan Prasad, who has categorically deposed about the search of the contraband from the applicant, she would place reliance upon the following statement made in the affidavit :-

“The panchnama proceedings were completed peacefully on spot in presence of two independent Pancha. Panchnama was completed at 11.40 hrs. Panchnama proceedings were signed by me, suspect and both the Panchas. All procedure and instructions were followed strictly during the seizure.

It is submitted that CR number used by the NCB is not equivalent to FIR.

It also states that CR number is a running number as per the records of the NCB for the purpose of internal identification reference will be no document with CR No. like in case of FIR which is the complaint u/s.154 of Cr.P.C”

In any case, it is her submission that when the seizure of contraband from the applicant is established, there do not exist reasonable grounds for believing that he is not guilty.

According to Ms.Pai, the alleged discrepancies which are sought to be canvassed by Mr.Khan shall have to be thrashed out during trial and the contentions are too pre-mature to be considered at the stage of grant of bail, as the prosecution will have an opportunity to explain these things during the trial. Ms.Pai has placed on record the statement of the panch witness recorded u/s.67 of the NDPS Act and she would submit that Shri Parag Sawant had clearly referred to the appraisal of the legal right to the accused, of having search being conducted, as per the Officer under Section 50 of the NDPS Act and according to him, Zahid Rana politely declined the same. Another statement of Avinash Tiwari is recorded u/s.67 of the NDPS Act and is also on the very same lines, as that of Parag Sawant who has signed the panchnama, is relied upon by Ms.Pai.

11 When I have carefully perused the relevant documents, which include the panchnama dated 8/4/2021, the question arises as to how the C.R. number find a mention in the panchnama as the NCB team along with the panchas reached the house of the applicant at 10.20 hours and on carrying out the search and seizure of the alleged contraband, the panchnama is recorded to have concluded on 11.40 hours in the residential premises of Zahid Rana, the applicant. A notice u/s.67(c) is issued to him on the spot, directing him to submit his say about the recoveries and even on this document, the number of the

proceedings i.e. NCB/MZU/CR/ 35/2021 find a mention. It is also recorded as under :-

“Zahid Rana requested to IO Ashish Ranjan Prasad to come along with NCB Team to which he agreed and after that, the IO Ashish Ranjan Prasad along with NCB team and Zahid Rana moved the NCB office”.

12 Ashish Ranjan, the Investigating Officer has offered his explanation since I had directed an affidavit to be filed to ascertain the process followed by him, which fail to convince me, that what is done in this case.

13 In *Babita @ Tai Mohan Shardul Vs. State of Maharashtra, 1994, Cr.L.J, 792*, the Division Bench of this Court has recorded as under :-

“6 Evidence of this witness therefore, clearly shows that whatever was written on the labels of the packets, which were placed within the wrappers, was written at the spot, namely, where the appellant was apprehended, and the brown sugar was recovered and seized. Surprisingly, however, we find that on all those labels, the Crime Register number of the case registered over the seizure as also the Muddemal number under which the seized goods was registered in the Muddemal Register of the Police Station Malkhana have been written in Marathi. Having regard to the fact that when the police party went to work out the information they could not have known that they would be successful therein and, for that matter, commission of an offence under the Act would be detected, the find of the crime register number and muddemal register number is rather suspicious.

7. To explain this glaring circumstances, which makes the story of seizure wholly unreliable, P.W. 7 wanted us to believe that the crime register number was obtained telephonically before they proceeded for the raid. If the above explanation of P.W. 7 is taken to its logical conclusion it would mean that even if no recovery was made, the police station would have to record a blank entry against the serial number in question in the crime register. The other fallacy in the explanation is that if some one intended to register a cognizable case in the interregnum between the time of furnishing of the telephonic information and the successful conduct of the raid, the sequence of running numbers would not be maintainable in the crime

register, a situation which cannot be envisaged.”

14 A somehow similar situation has surfaced in this case as the FIR number is to be found in the panchnama itself, as it cannot be contemplated that the trap is going to be successful and no Investigating Officer will proceed from the police station by carrying a CR number, as this may pose a problem. It is quite possible that if some other raiding team is also simultaneously carrying a search in some other place, then, without consulting as to which panchnama commenced first, and which ended later, it is difficult to fathom the appropriate C.R number. I cannot accept the version of Ms.Pai that raiding team, start on their venture, on being armed with seizure kit, seals and also the C.R. number.

 The explanation offered by Mr.Ashish Ranjan, the Intelligence Officer, is that he made a call to the office, after the procedure was over, he asked the crime number, as the test result of the recovered drug was shown ‘positive’ and suspect was present on the spot.

 This course adopted, create a suspicion as the normal procedure followed is, after the conduct of the trap/search and seizure, the accused is taken to the NCB office and there, the C.R is registered and the crime number is allotted.

 At this stage, whether the procedure followed is right or wrong, and what would be its consequence, is not for me to determine, but this definitely make the prosecution case,

doubtful, as it proceeds on a footing that the information received is bound to result into a positive seizure and though Ms.Pai had argued that it is possible for the Officer to proceed with the tentative number of the C.R, Mr.Ashish Ranjan has submitted that he made a phone call and thereafter, had put the number of the C.R on the panchnama.

The notice issued to the applicant u/s.67 of the NDPS Act, also has a mention of C.R No.35/2021 and it is stated to be registered at NCB, Mumbai. Zonal Unit, which is an incorrect statement as the notice was served to the applicant immediately after the panchnama was prepared and before he was taken to the police station.

Merely because the case number was obtained on telephone and it is put in the panchnama and the notice u/s.67, it is not conclusively shown that the case was registered at NCB, Mumbai Zonal Unit.

Apart from this, the notice issued u/s.50 to the applicant, do not bear the signature of the panchas though the panchas in the statement u/s.67, which Ms.Pai has produced has referred to the appraisal of Zahid Rana, about his right u/s.50.

15 Another surprising factor is about the narration recorded in the panchnama about the recovery of *ganja* which is referred to as 'leafy substance' found in the Honda Active of the applicant and when it is put to test with the aid of Drug

Detection Kit, it gave positive result of *ganja*, which is described u/s.2(iii)(b) of the Act, as the flowering or fruiting tops of cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designate. It definitely is not a green leafy substance and hence it is surprising how the Drug Detection Kit gave a positive result, if the material seized was not the flowering or fruiting tops as leaves by themselves will not be '*ganja*'.

16 I do not deem it necessary to deal with several other inconsistencies which Mr.Khan has pointed out to exist in the case of the prosecution as, at this stage, I need not pronounce upon the same, it being a matter of trial. However, these lacunae which are referred to as 'loopholes' will yield in favour of the applicant at the time of trial. In any case, on completion of investigation, the charge-sheet is filed and the applicant remain incarcerated since 9/4/2021 and it is almost 2 ½ years that he is incarcerated with no chance of the trial being concluded within a specified timeline. Till date, I am being informed that even the charge has not been framed and this is an additional ground for releasing the applicant on bail.

I am thus satisfied that there are reasonable grounds for believing that the applicant is not guilty of the offence and without any antecedents attributed to him, it can be safely presumed that he is not likely to commit any offence, while on bail. Hence, the following order :-

ORDER

- (a) Application is allowed.
- (b) Applicant Zaid Zahir Rana shall be released on bail in C.R.No. NCB/BZU/CR-35/2021 registered with NCB, Mumbai on furnishing P.R. Bond to the extent of Rs.50,000/- with one or more sureties in the like amount.
- (c) The applicant shall mark his attendance on first Monday of every month between 10:00 a.m to 12:00 noon to the NCB, Mumbai and make him available as and when required by the Investigating Officer.
- (d) In case of any two consecutive defaults in marking their presence in the NCB, in that event, the NCB is at liberty to file an application for cancellation of bail of the applicant.
- (e) The applicant shall provide his current address, telephone number, place of residence and intimate about the change if any, to the concerned Investigating Officer.
- (f) The applicant shall not travel outside the jurisdiction of the Trial Judge without his prior permission and shall also deposit his passport with the Investigating Officer, if any.
- (g) The applicant 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 applicant shall not tamper with evidence.

(SMT. BHARATI DANGRE, J.)