

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

BAIL APPLICATION NO.1946 OF 2022

Pranit Suryakant Khaire ...Applicant

Verses

The State of Maharashtra ... Respondent

Mr. Raunak Naik a/w Lochan Chandka, Advocate for the Applicant.

Mr. Amit A. Palkar, APP, for the Respondent-State.

CORAM : G.A. SANAP, J.

DATE : 4th NOVEMBER 2023.

P.C:-

. The applicant, who is accused No.2, in Crime No. 14 of 2022, registered with Wadala Police Station, Mumbai, for the offences punishable under Sections 8(c) r/w 20 (c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”) has applied for bail.

2 I have heard learned Advocate for the accused and learned APP for the State.

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3 Learned Advocate for the accused submitted that the quantity of *Charas* recovered from the possession of the accused was 700 gms., which is a intermediate quantity. Learned Advocate submitted that the quantity of *Charas* recovered from accused No.1-Amay Sanjay Jadhav was 1 Kg. 300 gms. Learned Advocate submitted that considering the quantity of 700 gms. *Charas* recovered from the individual possession of accused No.2, the rigors of Section 37 of the NDPS Act would not get attracted. Learned Advocate submitted that the accused has no criminal antecedents and, therefore, in this case by exercising the discretion, the accused may be granted bail. Learned Advocate further submitted that in this case the compliance of Sections 42(2) and 50 is doubtful and, therefore, at this stage, the accused is entitled to get the benefit of non compliance. Learned Advocate submitted that the facts recorded in panchanama with regard to the seizure of the contraband from the accused persons would show that the recovery was from the individual possession of the respective accused and, therefore, accused No.2 cannot be connected with *Charas* recovered from the possession of accused No.1. Learned Advocate submitted

that the accused is ready to abide by the conditions that may be imposed by this Court.

4 Learned APP submitted that the material complied in the charge-sheet clearly indicates the compliance of provisions of Sections 42(2) and 50 of the NDPS Act. Learned APP further submitted that this is a question of fact and, therefore, it will have to be decided on the basis of evidence at the stage of the trial. Learned APP submitted that in this case the crime was committed pursuant to the conspiracy and, therefore, the individual possession of *Charas* by the accused would not be of significance. It is submitted that both the accused would be accountable for the entire recovery. Learned APP further submitted that even the recovery of 700 gms. *Charas* from accused No. 2 by any standard is huge recovery. Learned APP, therefore, submitted that this is not a fit case to grant bail to the accused only on the ground that he has no criminal antecedents.

5 I have perused the panchanama. The case of prosecution is that this offence was committed by the accused in furtherance of conspiracy. Accused No.2 was rider of the motorcycle and accused No.1 was a pillion rider. It is seen that the police had a specific information about the accused persons and, therefore, on the basis of the said information the accused were apprehended. Much has been said about the non compliance of Sections 42(2) and 50 of the NDPS Act. On going through the record, at this stage, I am afraid to accept the submissions advanced by learned Advocate for the accused on this point. The record *prima facie* indicates that there was compliance these provisions.

6 The next important question that needs consideration is, as to whether on the basis of available material and particularly, the sequence of events recorded in panchanama, accused No.2, can be accounted for the recovery of 1 kg. 300 gms. *Charas* from the possession of accused No.1. A perusal of the panchanama *prima faice* shows that they were riding same motorcycle but on interception in their search, they were found

carrying their individual substance in the bags. At this stage, on the basis of the contents of panchanama accused No.2 can be fully accounted for the recovery of 700 gms. *Charas* recovered from his possession. The quantity recovered from the possession of accused No.2 is not a commercial quantity. In view of this quantity as far as accused No.2 is concerned, the rigors of Section 37 of the NDPS Act would not apply with full force at this stage. In view of this, the Court has to consider whether the case in question is a fit case to exercise the discretion in favour of accused No.2 to enlarge him on bail. It is undisputed that accused No.2 has no criminal antecedents. In my view, this fact would go in favour of accused No.2. In the facts and circumstances, in my view, without dilating further on the merits of the case, it needs to be stated that the accused has made out a case to exercise the discretion in his favour and to enlarge him on bail. In my view, the discretion can be used in favour of the accused.

7 The accused, in my view, is entitled to get the bail. It is made clear that the observations made in this order are for the

purpose of deciding the bail application and the learned Judge of the trial Court shall not get in any manner influenced by the same while deciding the matter on merits after recording evidence. Accordingly, the application is allowed on the following terms and conditions.

ORDER

- i) The Application is allowed.
- ii) The applicant/accused- Pranita Suryakant Khaire be released on bail in connection with C. R. No. 14 of 2022 registered with Wadala Police Station, Mumbai, for the offences punishable under Sections 8(c) r/w 20 (c) and 29 of the NDPS Act, 1985 on his furnishing P.R. Bond in the sum of Rs.25,000/-(Rupees Twenty Five Thousand only) with solvent surety in the like amount.
- iii) The applicant/accused shall not in any way tamper with the prosecution evidence.
- iv) The applicant/accused shall not threaten, induce or pressurize the prosecution witnesses in any manner.

- v) The applicant/accused shall co-operate for the purpose of expeditious disposal of the trial.
- vi) The applicant/accused shall not indulge in commission of such crime.
- vii) The application stands disposed of accordingly.

(G.A. SANAP, J.)