

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

BAIL APPLICATION NO. 3141 OF 2022

Rahul Uddhav Sharma

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. R. S. Bidkar - Advocate for the Applicant

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

CORAM : S. M. MODAK, J.

DATE : 19th JULY, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned APP.

2. The present offence is registered on the complaint of PSI Satish Waje attached to Central Police Station, Ulhas Nagar on 04/05/2022 under Section 8(C) , 22(b) of the Narcotic Drugs and Psychotropic Substances Act. However during investigation element of the conspiracy was disclosed and hence charge-sheet was filed under Section 109 and 120-B of the Indian Penal Code. Though offence under the provisions of Narcotic Drugs and Psychotropic Substances Act is involved, Police have not taken samples. Entire contraband was sent to the Chemical Analyzer. The seizure

panchnama was done in the intervening night of 28/04/2023 and 29/04/2022 by Senior PI traffic branch Ulhasnagar. White colour powder was found in the dikki of the two wheeler without having number plate. This Suzuki access motor cycle was parked in the campus of the traffic department of the Ulhas Nagar.

3. There were two informations received by the Police. One is about two motor cycles moving in the city without number plates and second is about contraband being concealed there in dikki of one motor cycle.

4. During investigation and noticing two motor cycles without number plates, the prosecution relied upon two documents. One is station diary entry on page no. 35 dated 28/04/2022. Information was given by one unknown person to PSI Sandeep Egade. He was told that one motor cycle was parked near Simran Residency Chopda Court, Ambedkar Road, Ulhas Nagar and another in front of WW Bar, near Shanti Nagar, Ulhas Nagar. Though unknown person has told those place, those motor cycles were shifted to the premises of the traffic department. Whereas another document is statement of the witness by name Hitesh Shinde. He works in the traffic department. It is dated 08/05/2022, at page no.

149. He was driver of the mobile vehicle. There was one person by name Ram Wadhawa who is wanted accused came to the traffic branch on 26/04/2022 and informed about two motor cycles moving in the city without number plates. Those two vehicles subsequently found to be of one Ravi Talreja. The said Talreja having property dispute with Ram Wadhawa.

5. On 28/04/2022, there was call received by the patrolling staff from Cell No. 8007768877, the call is by the present Applicant. He gave correct information about the parking of two motor cycles, one is in compound of Simran Residency and second is near WW bar. Those vehicles were found. Emphasis is on station diary. If there is reference of unknown person in the station diary how in a statement of Mr. Shinde, there can be reference of the present Applicant is the contention on behalf of the applicant.

6. Learned APP explained that station diary was on the basis of the information given by the traffic department, who was not knowing the name of the present Applicant.

7. The entire episode does not ends there. One Nandlal Wadhawa visited the traffic department office on 28/04/2022 and informed that some narcotic substance is concealrd below the seat of

the one motor cycle which is parked in their compound. The motor cycle was searched in the intervening night, as said above and white colour powder was found.

8. The traffic police department have not lodged the F.I.R. but that contraband was sent to the Chemical Analyser. They refused to accept, as F.I.R. is not registered. Such reference finds place on page no. 20. Accordingly, PSI Waje lodged the F.I.R. on 04/05/2022. Furthermore, the Chemical Analyzer has refused to accept the muddemal for the reason that they were not labelled. Relevant entry finds place on page no. 108. On this background, suspicion is raised about authenticity of all this procedure.

9. Learned APP submitted that there is property dispute in between Rajesh Talreja and Ram Wadhawa and Nandlal Wadhawa. The statement of Rajesh Talreja is there on page no. 51. Learned APP pointed out following materials:-

- A) Page No. 61- CCTV footage were seized from the cameras installed near WWF restaurant and bar and hotel Hira Moti restaurant and bar. One Ravi Talreja, who is son of the Rajesh Talreja was noticed. This is at the time when the traffic police have transported the unnumbered motor cycle.

B) Page No. 81 CCTV footage, panchanama dated 18/05/2022, wherein the present Applicant was seen near the gate of the crime branch office and traffic department office at 09.50.23 p.m. on 28/04/2022.

10. According to the learned APP these materials (that is to say Applicant found near the traffic Police office and he is person who was given the information to the traffic department) show his involvement and he opposed the bail also for the reason that Wadhawas are yet not arrested. He also submitted that bail granted to co-accused Aziz Sheikh is on different parameters.

11. It is true that material pointed out shows the complicity of the present Applicant. It is also true that yet Wadhawas are not arrested. There is memorandum statement of the present Applicant on page no. 26 wherein he has shown how he has planted the contraband in that motor cycle. It is disputed fact whether any materials discovered as per this memorandum statement and whether it falls under section 27 of Evidence Act.

12. From the above what I can gather is that even though there is evidence about conspiracy when it comes to the question of

the compliance of the provisions of the Narcotic Drugs and Psychotropic Substances Act, what I find that there are lacunae. The contraband is not of commercial quantities. There are certain defects while sending the contraband to the chemical analyzer.

13. Furthermore entire contraband was sent and samples were not taken. So observations in case of *Union of India Vs. Mohanlal and Another*¹ are not followed.

14. So I am inclined to grant bail. Hence the Order :-

ORDER

- (i) Bail application is allowed.
- (ii) Applicant arrested in connection with C.R. No. I-163 of 2022, registered with Central Police Station, Ulhasnagar for the offence punishable under Sections 8(C), 22(b) and 29 of the Narcotic Drugs and Psychotropic Substances Act, be released on bail on furnishing Personal bond and surety bond in sum of Rs. 50,000/-.
- (iii) Applicant is directed to give attendance to the Central Police Station, Ulhasnagar on 02nd and 4th Saturday from 3.00 to 5.00 p.m. for six months.
- (iv) Applicant shall not threaten the prosecution witnesses.
- (v) Needless to say, violating of the condition above will make the Applicant liable for cancellation of bail.

1 (2016) 3 SCC 379

15. It is made clear that the these are my prima facie observations.
16. Application is disposed of in the aforesaid terms.
17. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]