



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

BAIL APPLICATION NO. 2748 OF 2023

ANUJ KESHWANI S/O SANJAY KESHWANI ..APPLICANT
VS.

1. THE UNION OF INDIA
2. THE STATE OF MAHARASHTRA ..RESPONDENTS

Mr. Ayaz Khan a/w Ms. Gayatri Gokhale, Ms Zainba Abdi and
Mr. Akash Desai, for the Applicant.
Ms. A.S.Pai, Special PP, for the Respondent No.1.
Mr. N. B. Patil, APP for the State- Respondent No.2.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 9, 2023

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP for the State.
- 2.** This is an application for bail in respect of the offence punishable under sections 8(c) read with 20(b)(ii)A, 20(b)(ii)B, 22(c), 25, 27, 27A, 28, 29 and 30 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter 'the NDPS Act' for short) registered on 28/08/2020 vide C.R. No. NCB/MZU/CR-16/2020 with Narcotic Control Bureau, Mumbai Zonal Unit.
- 3.** The applicant is the accused no. 9. There are in all 36

accused in the present C.R. 35 accused except the present applicant have been enlarged on bail. Based on the statement of the co-accused no. 5-Mohammad Kaizan Ebrahim under section 67 of the NDPS Act, the name of the present applicant was disclosed. On the basis of the statement, raid was conducted at the premises of the applicant when premises of the applicant was searched. The following contraband was seized which is a commercial quantity.

- i) 585 grams of black colour solid substance purported to be Hashish/Charas;
- ii) 270.12 grams of green leafy, small leafy buds and green leafy granules substances purported to be Marijuana/ Ganja.
- iii) 3.6 grams of white colour power purported to be THC.
- iv) 32 complete blot papers and 10 pieces of blot paper was in yellow, gray and light blue colour. The same were weighed and found to be 0.62 grams.

4. The applicant was arrested on 07/09/2020 and is now in custody for more than 3 years . There are 160 witnesses the prosecution proposes to examine. The trial is likely to take a long time to conclude. One of the point canvassed by Mr. Khan was non-compliance of section 42 of NDPS Act as

the seizure is conducted without search warrant. I make it clear that I have not gone into the contentions raised by Mr. Khan as I am satisfied that the applicant can be enlarged on bail in view of the order dated 16/12/2022 in Petition for Special Leave to Appeal (Cri.) No. 8900 of 2022 passed by the Hon'ble Supreme Court in the case of co-accused Jitendra Jain. The order reads thus :-

"The prayer in this Special Leave Petition is to release the petitioner on bail in a case registered under Sections 8 read with Section 20(b)(ii)B, 27, 27A and 29 of the N.D.P.S. Act vide CR No.16/2020 dated 18-12-2020 registered at Police Station, Narcotics Control Bureau, Mumbai Zonal Unit, Mumbai.

We have heard learned counsel appearing on behalf of the petitioner as well as learned Additional Solicitor General appearing on behalf Respondent No.1.

Though it is a case of commercial quantity and allegations levelled against the petitioner are serious in nature, but having regard to the fact that he is in custody for 2 years and conclusion of trial will take time, we are inclined to release the petitioner on bail.

The petitioner is, accordingly, ordered to be released on bail, subject to his furnishing bail bonds to the satisfaction the trial Court."

5. Learned Special PP appearing for the NCB while opposing the application on merits submitted that proper procedure has been followed by NCB. It is further submitted that proceedings have been initiated under the Smugglers

and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 and there is also an order passed under section 68-F of the said Act which clearly reveals the applicant's involvement in the drug deal. The applicant is found to have benefited financially by the said transaction. It is therefore submitted that as the twin conditions in terms of section 37 of the NDPS Act are not satisfied, the applicant should not be enlarged on bail.

6. My attention is invited by learned counsel for the applicant to the order dated 04/10/2023 passed by this Court in Bail Application No. 688 of 2023 in case of Mohammed Azam Jumman Shaikh Vs. Union of India. This Court while enlarging the applicant therein on bail after placing reliance on the order dated 16/12/2022 passed by the Supreme Court in case of co-accused Jitendra Jain, in paragraph 6 observed thus :

“The applicant in the present case is in custody for 34 months. Though learned counsel for the respondent vehemently opposed the application for bail contending that the accusations levelled against the applicant is serious in nature, however having regard to the fact that the co-accused No.26 who had purchased the contraband from the present applicant (original Accused No.27) has been enlarged on bail by the Hon'ble Supreme Court, on the ground of parity, I am inclined to enlarge the applicant on bail as the applicant is

now in custody almost for 34 months with no possibility of the trial concluding any time soon. I am informed that there are five criminal antecedents reported against the applicant. The applicant has been acquitted in two of the C.Rs. None of the antecedents are under the NDPS Act.”

7. Learned Special PP submitted that NCB is proposing and is in the process of challenging the order dated 04/10/2023 passed by this Court enlarging the co-accused Mohammad Azam Jumman Shaikh on bail. I had enquired as to whether the order has been challenged, as in case the order is so challenged, I was inclined to defer the hearing of this application awaiting the outcome of the decision of the Hon’ble Supreme Court. It is however pointed out that the filing of the SLP is under process and the same has not actually been filed. In such circumstances, I proceeded to hear the application which I had adjourned on the previous date to enable learned Special PP to seek instructions as to the status of the challenge to the order of this Court which was passed on 04/10/2022.

8. The accusations against the applicant is that the applicant was found in possession of the commercial quantity of the contraband. The accusations against the present applicant are serious in nature. However, I am

enlarging the applicant on bail in view of the order dated 16/12/2022 passed by the Hon'ble Supreme Court and having regard to the observations made therein while enlarging the co-accused Jitendra Jain on bail. An attempt was made by learned Special PP to contend that the contentions raised by the applicant as controverted by the respondents will have to be dealt with on merits to overcome the rigours of section 37 of NDPS Act. However, in the light of the observations made by the Hon'ble Supreme Court, I am of the view that as in this very C.R., the co-accused against whom serious allegations are levelled has been released on bail for the reasons mentioned therein and as the applicant is in custody for more than 3 years, the conclusion of the trial will take a long time, I am bound to follow the order of the Hon'ble Supreme Court and therefore I proceed to enlarge the applicant on bail.

9. It is pertinent to note that this Court in the case of co-accused Jitendra Jain had rejected the application for bail observing that the accusations are serious and in the facts and circumstances the twin conditions laid down by section

37 of the NDPS Act are not satisfied. The Hon'ble Supreme Court while enlarging the co-accused Jitendra Jain on bail observed that though the commercial quantity is involved and the accusations are serious but having regard to the fact that he is in custody for two years and conclusion of trial will take some time, released Jitendra Jain on bail. In the light of these observations, recording a satisfaction in terms of section 37, according to me will be in the teeth of the Supreme Court's order releasing the co-accused on bail on the ground of the prolonged incarceration. Following the Supreme Court's order, I am of the opinion that in the facts of the present case, prolonged incarceration of the applicant as an undertrial, coupled with the fact that trial will take a long time to conclude is a factor enough for me to be satisfied that the rigours of section 37 can be overcome.

10. As indicated earlier, the prosecution proposes to examine 160 witnesses, for even the Hon'ble Supreme Court has observed that the conclusion of trial will take time. The applicant has already spent a period of more than 3 years in custody.

11. It is submitted that one criminal antecedent is

reported against the applicant. So far as the criminal antecedent is concerned, it is pointed out by learned counsel for the applicant that after he was arrested in respect of the present offence, on the basis of the statement of the present applicant, the applicant was also arrested on the allegation of consumption of small quantity of drug in respect of which the applicant has been enlarged on bail by order dated 10/03/2021 passed by the Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai. According to me, the antecedent is not sufficient to deprive the applicant the facility of bail in the present case. In this view of the matter, I am inclined to enlarge the applicant on bail.

ORDER

(a) The application is allowed.

(b) The applicant-Anuj Keshwani S/o Sanjay Keshwani in connection with C.R. No. NCB/MZU/CR-16 of 2020 registered with Narcotics Control Bureau, Mumbai Zonal Unit shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more sureties in the like amount.

(c) The applicant shall attend the investigating officer of Narcotics Control Bureau, Mumbai Zonal Unit once in a fortnight on 1st and 3rd Monday of each month between 11.00 a.m. and 1.00 p.m.

(d) 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.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(f) The applicant shall not leave the area of Mumbai/ Mumbai Suburban District without the permission of the trial Court.

(g) The applicant shall surrender his passport, if any, to the investigating officer.

12. The application is disposed of.

(M. S. KARNIK, J.)