



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.924 OF 2023

Babali Niranjan Nayak & Anr. ...Applicants
Versus
The State of Maharashtra ...Respondent

Mr. Rajendra Bidkar, Advocates, for the Applicants.
Ms. S. S. Kaushik, APP, for the Respondent-State.

CORAM: MADHAV J. JAMDAR, J.
DATED : 12th MARCH 2024

PC:-

1. Heard Mr. Bidkar, learned Counsel for the Applicants and Ms. Kaushik, learned APP for the Respondent-State.
2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1.	C. R. No.	567 of 2021
2.	Date of registration of F.I.R.	08/10/2021
3.	Name of Police Station	Rajgad Police Station, District-Pune
4.	Section/s invoked	8(c), 20(b)(ii)(C) of the <i>NDPS Act, 1985</i>
5.	Date of incident	08/10/2021
6.	Date of arrest	09/10/2021
7.	Date of filing of Charge-	29/03/2022

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3. As per the prosecution case, on 7th October 2021, Mr. Sachin Patil, Police Inspector received information that a bus bearing registration No. MH 03 CV 7290 is going from Mumbai to Goa and that a person travelling in the said bus is transporting Charas. Pursuant to said information, two *panchas* were summoned and team was formed to conduct the raid. On the arrival of said bus within the jurisdiction of Rajgad Police Station, Pune, the said bus was made to halt and police officer conducted a search of the passengers. The said search resulted in recovery of 6 kgs 453.93 grams of *Charas* from a person on seat No.14 in the bus and he disclosed his name as Mustaki Razak Dhuniya. The C.R. was registered bearing No.567 of 2021 with Rajgad Police Station, District-Pune against the Accused No.1-Mustaki Razak Dhuniya and he was arrested on the very day. During the investigation it is revealed that the Applicants were also travelling along with Accused No.1, hence both of them were arrested on 9th October 2021.

4. Mr. Bidkar, learned Counsel for the Applicants submitted that the Applicants are young ladies. The Applicant No.1 is aged 25 years and the Applicant No.2 is aged 21 years. He submitted that both of them were arrested on 9th October 2021 and the Charge-sheet is filed on 29th March 2022 and till date there is no progress in the trial. He submitted that the only role attributed to the Applicants is that they travelled together with Accused No.1 from

whom there is recovery of 6 kgs 453.93 grams of *Charas* and that Rs.30,000/- has been transferred by the Accused No.4 in the account of Applicant No.1 i.e. Accused No.2. He submitted that the Accused No.4 granted bail by the learned Trial Court. He submitted that there are no criminal antecedents against the Applicant. He therefore, submitted that twin conditions as envisaged under Section 37 of the *Narcotic Drugs and Psychotropic Substances Act, 1985* has been satisfied and therefore, the Applicants are entitled to be released on bail.

5. On the other hand, Ms. Kaushik, learned APP for the Respondent-State strongly opposed the Bail Application. She submitted that Accused No.4 deposited Rs.30,000/- in the account of Applicant No.1. The Applicants travelled with Accused No.1. She pointed out the tickets (page 104), which shows that the Accused No.1 has booked the tickets for Accused Nos. 2 and 3. She pointed out recovery of mobile and Aadhar Card of the Applicant No.1 (page-60), deposit of cash of Rs.30,000/- by Accused No.4 in the account of Accused No.2 (page 118) and C.C.T.V. footage concerning the same (page-126) and *panchnama* regarding C.C.T.V. footage (page-133).

6. Perusal of the record shows that in the present case, the incident in question occurred on 8th October 2021, F.I.R. was lodged on 8th October 2021, the Applicants were arrested on 9th October 2021 and, Charge-sheet was filed on 29th March 2022. There is no further progress in the trial. According to Ms. Kaushik,

learned APP charge has been framed on 16th March 2023, whereas Mr. Bidkar, learned Counsel for the Applicant disputes the said position and he states that till date the charge is not framed yet. As per the Charge-sheet, there are 25 witnesses proposed to be examined by the prosecution. Even if it is assumed that charge is framed on 16th March 2023, for about one year not a single witness has been examined. The trial is unlikely to conclude any time soon and is likely to take a considerably long time.

7. Learned Additional Sessions Judge, Pune by Order dated 26th July 2022 granted bail to the Accused No.4-Dinesh Madhukar Naik. The relevant paragraphs are paragraph Nos.7 and 9, which read as under:-

“7. Admittedly, contraband never seized from the possession of this applicant. However, as per prosecution in view of Section 29 of NDPS Act applicant is indulged in hatching conspiracy as he provided financial help and made arrangement of travelling of co-accused in order to make transportation of contraband articles. Therefore, the offence punishable under Section 27(a) and 29 of NDPS Act get attracted against this applicant. Now it appears that before alleged incident the travelling tickets of applicant and co-accused were came to be booked at once and there appears that an amount of Rs.30,000/- has been transferred by this

applicant to co-accused. So merely on the basis of these two circumstances at this stage it cannot be believed that applicant has hatched criminal conspiracy and made finance to accused to help him in transportation of contraband within the meaning of Section 27(a) and 29 of NDPS Act. So in my opinion there appears no strong prima facie material against applicant so as to infer that there is reason to believe that accused is guilty of alleged offences so as to deny bail to him.”

“9. So far as ban created to grant bail under Section 37 of NDPS Act is concern, two conditions are to be established by the accused that he is not guilty of the offence as alleged and while on bail he will not commit the crime. Here in this case admittedly huge quantity of contraband has been seized from co-accused which is of commercial quantity and not from this applicant. As stated earlier, merely travelling together by applicant with co-accused by bus and their tickets were booked by same person, cannot be considered as hatching of conspiracy to give effect to the crime in question. Further, transferring some amount to accused No.2 cannot be said to be making finance to do the business of contraband without having strong prima facie material in that regard. So at this stage I am of the

view that from the material available in charge-sheet there appears no grounds to believe that accused is guilty of the offences as alleged and he will commit the crime while on bail. So in consideration of above discussed circumstances I find that accused is entitled to be released on bail but on some conditions. Hence, following order.....”

8. As far as the material against the Applicants is concerned, they travelled along with Accused No.1 from whom 6 kgs 453.93 grams *Charas* has been recovered. Their tickets are booked by Accused No.1 and Accused No.4 has deposited an amount of Rs.30,000/- in the account of the Applicant No.1.

9. Thus, there is substance in the contention of Mr. Bidkar, learned Counsel for the Applicant that twin conditions as envisaged under Section 37 of the *Narcotic Drugs and Psychotropic Substances Act, 1985* are satisfied in view of the role attributed to the Applicants and that there are no antecedents.

10. There are no criminal antecedents against the present Applicants.

11. The Applicants are young women.

12. The Applicants do not appear to be at risk of flight.

13. Accordingly, the Applicants can be enlarged on bail by imposing conditions.

14. In view thereof, the following order:-

ORDER

- (a) The Applicant No.1 – Babali Niranjana Nayak and the Applicant No.2-Sukanti Niranjana Nayak be released on bail in connection with C.R. No.567 of 2021 registered with the Rajgad Police Station, District – Pune on their furnishing P.R. Bond of Rs.50,000/- each with one or two local solvent sureties each in the like amount.
- (b) On being released on bail, the Applicant shall furnish their cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (c) The Applicant shall report to the Rajgad Police Station, District - Pune on the first Monday of every month between 11.00 a.m. and 1.00 p.m. until the

conclusion of the trial.

- (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 such a person from disclosing the facts to the Court or to any Police personnel.
- (e) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (f) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.
- (g) The Applicant shall surrender their passport, if any, to the Investigating Officer.

15. The Bail Application is disposed of accordingly.

16. It is clarified that the observations made herein are *prima facie*, and the Trial Court shall decide the case on its merits, and uninfluenced by the observations made in this order.

[MADHAV J. JAMDAR, J.]