



Diksha Rane

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

BAIL APPLICATION NO.1080/2024

MOHD. ANAS S/O MOHD. NASEEM

..APPLICANT

VS

UNION OF INDIA AND ANR

..RESPONDENTS

Adv. Ayaz Khan for the applicant.

Adv. Shreeram Shirsat, SPP a/w. Adv. Tanvi Mate, Adv.
Shekhar Mane for the respondent-UOI.

Mr. S. H. Yadav, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : APRIL 3, 2024.

P.C. :

1. Heard learned counsel for the applicant.
2. Mr. Shreeram Shirsat, learned counsel for the respondent no.1-UOI vehemently opposed the application.
3. This is an application for bail. The applicant was arrested on 22/2/2021 by the officers of the respondent for alleged violation of provisions of Section 8(c) read with Section 21(c), 22(c), 27A, 28, 29, 30 & 35 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter "NDPS Act", for short). The information was received by the Intelligence Officer, NCB, Mumbai, on 18/2/2021, at 10.30

a.m. that a courier parcel was lying in the hub of Professional Courier at Kurla (W), Mumbai. On 21/2/2021, the said parcel was seized from the office of Professional Couriers at Kurla. The consignment contained medicinal capsules, the ingredients of which was Tramadol Hydrochloride, a psychotropic substance. The courier contained 4824 Tramadol capsules weighing 2.613 kgs. The quantity admittedly is a commercial quantity and therefore, rigors of Section 37 of the NDPS Act will apply if an application for bail is made. It is the contention of the prosecution that the parcel was sent at the instance of the applicant.

4. The applicant had earlier filed an application for bail viz. Bail Application No.4077/2021 in this Court. The application was allowed to be withdrawn with a request to the trial Court to expedite the trial as only 8 to 10 witnesses were to be examined. The order dated 10/2/2023 reads thus:-

1. At the request of learned counsel for the applicant on instructions, the bail application is allowed to be withdrawn.
2. Learned counsel for the applicant made a request that considering the period spent by the applicant in custody, the trial may be expedited. The request made is reasonable. Considering that there are 8 to 10 witnesses to be examined,

as is the submission of learned counsel for the applicant, learned trial Court is requested to expedite the trial, preferably within 1 year's time from the date this order is produced on record. Considering that it has been repeatedly stressed that NDPS cases should be tried as early as possible because in such cases, normally accused are not released on bail, the aforesaid request for expediting the trial is reasonable. I am equally conscious of the pressure on the Special Court.

3. Liberty to apply for bail afresh in case the trial does not progress substantially.

4. The bail application is disposed of as withdrawn with liberty."

5. The trial could not complete within a period of one year. On 1/3/2024, this Court granted an extension of six months to conclude the trial. The order dated 1/3/2024 reads thus:-

1. In the facts of the present case, though the request is opposed by learned counsel for the applicant, I am inclined to grant 6 months further extension to conclude the trial in NDPS Special Case No. 1027 of 2021.

2. The Investigating Officer is present. Learned counsel for respondent No.1 Shri Shirsat submits that tentatively 5-6 witnesses more will be examined and ensures that all possible cooperation will be extended to the trial Court in the expeditious disposal of aforesaid matter. There shall not be requests for unnecessary adjournments.

3. The accused is at liberty to file bail application."

6. Learned counsel Mr. Shirsat for the respondent submitted that five witnesses have already been examined. It is submitted that only four witnesses remain to be examined and therefore, the trial is likely to conclude soon. It is submitted that considering that the contraband involves

a commercial quantity and there are materials against the applicant, this is not a fit case to enlarge the applicant on bail as in any case, this Court has extended the time to conclude the trial by a further period of six months.

7. It is common ground that on 23/2/2024, the examination-in-chief of PW-4 was partly recorded. On 4/3/2024, further examination-in-chief of PW-4 was completed and cross examination of PW-4 was also completed. On 12/3/2024, examination-in-chief of PW-5 was recorded partly. On 19/3/2024, the cross examination of PW-5 concluded. The prosecution witness was absent on 27/3/2024. On 2/4/2024, the prosecution witness was absent although he was given intimation to remain present.

8. It is thus seen that the trial is not protracted at the instance of the applicant. The applicant is co-operating with the trial Court. There are no criminal antecedents reported against the applicant. Since four witnesses are yet to be examined, the trial though is progressing will take some time to conclude, now that the extension to conclude the trial is also granted. The trial could not conclude within the time frame of one year fixed by this Court although only 8 to

10 witnesses were to be examined. There is no doubt that the trial Court is facing a heavy work load. I do not propose to fix a further time line. In such circumstances, considering that the applicant is in custody for more than three years, I am inclined to enlarge the applicant on bail in the facts and circumstances of the present case, however, by imposing stringent conditions. The rigors of Section 37 of the NDPS Act thus can be overcome. Since I propose to impose stringent conditions, it is unlikely that the applicant will commit any offence during the pendency of the trial. The investigation is complete. The charge-sheet has been filed. The applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Mohd. Anas s/o. Mohd Naseem in connection with F. No. NCB/MZU/CR-16/2021 shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more local sureties in the like amount.
- (c) The applicant shall report to the concerned Police Station once in a week on every Monday between 11.00

a.m. and 1.00 p.m. till the trial concludes.

(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 jurisdiction of Mumbai/Mumbai Suburban District without permission of the trial Court till the trial concludes.

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(h) The applicant shall deposit his passport with the trial Court. If he does not have a passport, he shall file an affidavit to that effect before the trial Court before his release on bail. The Jailor to permit the applicant affirm the affidavit.

9. The application is disposed of.

(M. S. KARNIK, J.)