

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

CRIMINAL REVISION APPLICATION NO. 377 OF 2022

Hemraj Ganeshram Patel ...Applicant
Versus
Union of India Anr. ...Respondents

**WITH
CRIMINAL REVISION APPLICATION NO. 378 OF 2022**

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**WITH
CRIMINAL REVISION APPLICATION NO. 380 OF 2022**

Hemraj Ganeshram Patel ...Applicant
Versus
Union of India Anr. ...Respondents

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Mr. Taraq Sayed a/w Ms. Ashwini Achari i/by Mr. Advait Tamhankar,
Advocate for the Applicant.

Mrs. Aruna S. Pai, Special P. P. for Respondent No.1-UOI/NCB.

Mr. Arfan Sait, APP for the Respondent No.2 – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 10th JANUARY, 2024.

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1. The applicant in all these applications had preferred an application for discharge before the trial Court which has been rejected vide orders dated 03.03.2022. Being aggrieved by the said order, the applicant has invoked the revisional jurisdiction of this Court challenging the said order.

2. The applicant was purportedly involved in four different cases registered vide C.R. Nos. 5/2020, 6/2020, 7/2020 & 8/2020. All these cases were investigated by Narcotic Control Bureau. Charge against the accused is under Sections 8(c) r/w Section 21(c), 23, 25, 29 & 35 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (hereinafter referred to as for short "N.D.P.S. Act"). The applicant was arrested in C.R. No.5 of 2020 on 04.03.2021, in C.R. No.6 of 2020 on 18.02.2021, in C.R. No.7 of 2020 on 23.02.2021 and in C.R. No.8 of 2020 on 07.03.2021.

3. The case of the prosecution is as under:

a) In NDPS Special Case No.747/2020 (C.R. No.08/2020), on the basis of specific information the officers of the NCB Mumbai effected seizure of 2000 tablets of Diazepam, 70 tablets of Tramadol, 388 tablets of Lorazepam,

200 tablets of Zolpidem, 130 tablets of Diazepam-Vulum and 510 tablets of Alprazolam Alko-1 seized under seizure panchnama dated 16.03.2020 at B-18, Anand Sagar, Old Nagardas Road, Andheri (East), Mumbai from the house of co-accused Shivam Piyush Hindia. In the statement under section 67 of the NDPS Act, the co-accused Shivam Shivam Piyush Hindia allegedly attributed the role to present applicant/accused as a supplier of the seized contraband. Hence the applicant/accused was apprehended on 17.3.2021.

b) In NDPS Special Case No.192/2021 (C.R. No.05/2020), it is the case of the prosecution that, on the basis of specific information the officers of the NCB Mumbai effected seizure of 97 tablets of MDMA (16 grams) and 119 tablets of Alprazolam (24 grams) seized under panchnama dated 05.03.2020 at M/S DHL Express India (P) Ltd., Plot No.66, Road No.13, MIDC, Andheri (East), Mumbai-400 093. The said contraband was seized from the two parcels vide Airway Bill Number 3417686985 and Airway Bill Number 3417679753 respectively. The name and the address of the consignor was Amit Mittal son of Ashok Kumar, house No.924, Lathmran Street, Jagadhri, Yamuna Nagar, Haryana-135001. The co-accused Shivam Piyush Hindia booked the

said consignment by using the fake IDs. The co-accused in his statement under section 67 of the NDPS Act allegedly attributed the role to the present applicant/accused as a supplier of contraband Alprazolam. Hence, the applicant/accused was apprehended on 04.03.2021.

c) In NDPS Special Case No.194/2021 (C.R. No.07/2020), it is the case of the prosecution that, on the basis of specific information the officers of the NCB seized 2.360 Kgs of black colour goli purported to be Hashish, 705 tablets of Zolpidem, 110 tablets of Morphine, 50 tablets of Diazepam, 950 tablets of Alprazolam, 30 tablets of Amlodipine, 90 tablets of Modafinil and 59900 tablets of Zopiclone seized under seizure panchnama dated 13.03.2020 at M/S DTDC, 37/D2 Ocean View Building, SVP Nagar, MHADA 4 Bungalows, Andheri (West), Mumbai and at M/S DHL Express India (P) Ltd., Plot No.66, Road No.13, MIDC, Andheri (East), Mumbai-400 093. During the alleged voluntary statement of accused Shivam Piyush Hindia dated 20.03.2021 recorded under section 67 of the NDPS Act, he disclosed the name of the present applicant/accused. Hence, the applicant/accused was arrested on 23.02.2021.

d) In NDPS Special Case No.193/2021 (C.R. No.06/2020), it is the case of the prosecution that, on the basis of specific information the officers of the NCB seized 500 tablets of Diazepam, 1000 tables of Alprazolam and 1200 tablets i.e. commercial quantity of Finasteride seized under the panchnama dated 07.03.2020 at Marine line Model Post Office. Certain contraband was recovered at the instance of accused Shivam Piyush Hindia from his residential premises in C.R. No.08/2020. During the interrogation, co-accused Piyush Hindia in his statement under section 67 of the NDPS Act dated 20.03.2021 disclosed the name of the present applicant as a supplier of the alleged contraband. Hence, the applicant/accused was apprehended on 18.02.2021.

4. Learned Advocate for the applicant submitted that there is no evidence to frame charge against the applicant. On completing investigation, complaint has been filed by the Respondent before the trial Court. The complaint does not spell out any offences against the applicant. The entire case of the prosecution is based on the statement of the co-accused which has been recorded under Section 67 of the N.D.P.S. Act. Such statement is not admissible in

evidence. There are no incriminating circumstances to show involvement of the applicant in the crime. Charge cannot be framed against the applicant. The trial Court has mechanically rejected the application for discharge for framing charge. Prima facie case is required to be made out and in the absence of evidence, the applicant cannot be prosecuted for the alleged offences.

5. Mr. Taraq Sayed has relied upon the following decisions:

- i) **Dilawar Balu Kurane Vs. The State of Maharashtra**¹.
- ii) **Maksud Ahmad s/o Aminuddin Malik Vs. The State of Maharashtra Through PSO Gittkhadan, Nagpur** delivered in Criminal Application No.94 of 2019 passed by the Nagpur Bench of the High Court of Bombay.
- iii) **Fabian Helmchen Vs. the State of Goa and Anr.** delivered in Criminal Revision Application No.477 of 2021 (F) passed by the Goa Bench of the High Court of Bombay.
- iv) **Savitri Periyaswami Devendra Vs. The State of Maharashtra** delivered in Criminal Revision Application No.498 of 2016 passed by the High Court of Bombay vide order dated 21.02.2018.
- v) **Salim Babu Shaikh @ Aitun Vs. The State of Maharashtra** delivered in Criminal Application No.1338 of 2012 passed by the High Court of Bombay vide order dated 21.01.2013.

¹ (2002) 2 SCC 135.

vi) **Iran Khan S/o Kasam Khan Pathan Vs. The State of Maharashtra** delivered in Criminal Revision Application No.11 of 2007 passed by the High Court of Bombay vide order dated 28.03.2007.

6. Learned Special P.P. Mrs. Pai appearing for Respondent- NCB has submitted that there is prima facie evidence to prosecute the applicant. At the stage of framing of charge, the Court is required to see whether prima facie case is made out. There is sufficient evidence to prosecute the applicant. He is involved in four different cases. The offences are of serious nature. The applicant is charged with of conspiracy. During interrogation of the co-accused, the involvement of the applicant is disclosed. The circumstances to establish the charge of conspiracy will have to be proved at the time of trial and at this stage the prosecution case cannot be discarded, without giving an opportunity to the prosecution to lead evidence. The trial Court has assigned cogent reasons while rejecting the application for discharge. The evidence discloses that the applicant is acting in connivance with the co-accused. The prosecution is relying upon the incriminating evidence to show the link between the applicant and the co-accused. The investigation disclosed that the applicant was supplier of the contraband.

7. Mrs. Pai has relied upon the decision of this Court in the case of **Abdul Mohammed Shaikh @ Abdul Thane V/s. Union of India and Ors.** in Criminal Revision Application No.28 of 2022 and other connected matters delivered on 14.06.2022. It is submitted that the fact that the case of the prosecution is identical with the aforesaid decision. Similar contentions were considered by this Court and the similar prayers were rejected by this Court on the ground that the prosecution has to be given an opportunity to prove the charge during trial.

8. As stated above, the applicant was allegedly involved in four different cases. The offences are registered under the N.D.P.S. Act. Section 29 of the N.D.P.S. Act has been invoked against the accused which relates to the offence of conspiracy. The case of the prosecution is that the applicant was in touch with the co-accused and involved in supplying the contraband. The prime contention of the counsel for the applicant is that the prosecution is relying on the statement of the co-accused recorded under Section 67 of the N.D.P.S. Act, which cannot be relied upon as it is not admissible in evidence. Both the sides have relied upon certain decisions. The law is well settled and there is no debate that at the stage of framing of charge the Court is required to see whether prima facie

case is made out against the accused to frame charge. The co-accused had disclosed during interrogation that the applicant has nexus in the offence to show that the contraband was seized directly from the possession of the applicant. Considering the role of the applicant, the material brought on record by the respondent will have to be tested in evidence during trial. The crime is registered under Sections 8(c) r/w Section 21(c), 23, 25, 29 & 35 of the N.D.P.S. Act. The prosecution had pleaded that the applicant and the co-accused were in contact with each other and letter was also issued to the Nodal Officer of Bharati Airtel Limited for collecting data records of the applicant and the co-accused. The learned Sessions Judge has considered all these aspects and decisions relied upon by both the sides and observed that the charge for abetting and criminal conspiracy is levelled against the applicant. The material brought on record by Complainant shows the relations between the co-accused and the applicant. The co-accused has given details like phone numbers, E-mail address etc. and at this stage it cannot be said that there is no sufficient ground to proceed against the applicant. It is further observed that co-accused had disclosed the name of the applicant, phone number, E-mail ID etc. and the fact that running of a company Apex Pharma at Jaipur by the brother of the applicant/accused. I do not find any

reason to take a different view than the trial Court. There is no dispute on law relating to statement of co-accused. It is not admissible in evidence. However, considering the circumstances relied upon by prosecution proceedings against the applicant cannot be terminated at this stage. Considering the nature of allegations it cannot be said that no case is made out for proceedings against the applicant. Prosecution will have to be given an opportunity to prove the charge during trial.

9. Hence, I pass the following order:

ORDER

Criminal Revision Application Nos.377 of 2022, 378 of 2022, 379 of 2022 & 380 of 2022 are rejected and disposed off accordingly.

(PRAKASH D. NAIK, J.)