

Shailaja

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

CRIMINAL BAIL APPLICATION NO.2206 OF 2022

Sunny Ashok Khanna	]	Applicant
Vs.		
The State of Maharashtra	]	Respondent

.....
Mr. Mithilesh Mishra i/b Ms. Sadiya Khan, for Applicant.

Mr. A.A. Palkar, A.P.P, for Respondent – State.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 26th MARCH, 2024.

PRONOUNCED ON : 1ST APRIL, 2024.

ORDER:

1. This is an application under Section 439 of the Code of Criminal Procedure, 1973 (for short “Cr. P.C”) by the applicant who has been arrested by the Anti Terrorist Squad, *Pune* in connection with C.R.13 of 2020 for the offences punishable under Sections 8 (c), 20 (b), (ii) and (C) 29 of the Narcotic Drugs and

Psychotropic Substances Act, 1985 (for short “N.D.P.S Act”) along with other accused.

2. Briefly stated, prosecution case is as follows.

3. On 19th December, 2020, Mr. Santosh Lakhe, Government Railway Police, *Pune* received an information from a secret informer that two persons of a particular description would be arriving near Wadia Bridge of *Pune* Railway Station around 22.45 p.m with two trolley bags full of *charas*. Information was immediately passed to the Senior Police Inspector Gaud by Police Head Constable Santosh Lakhe since Mr. Gaud was also In-charge Sub Divisional Police Officer, Railway *Pune*. He forwarded the information to Smt. Nerkar Pawar, Additional Police Superintendent Railway *Pune*.

4. Accordingly, a trap was laid for further procedure. Three teams were formed comprising certain Police Officers and all of them approached towards Wadia Bridge. The members of the raiding team concealed their presence in the shrubs. It was 10.55 p.m. After some time, two persons whose description had already

been given by the secret informer were found carrying two trolley bags by the side of the railway track. Their movements were suspicious. No sooner did members of the raiding team realize and confirm about the identity of those persons whose description match with the information received earlier, they were immediately nabbed.

5. Upon being asked, they gave evasive answers, however, after some time, they informed that one of them was Lalitkumar Dayanand Sharma, resident of Village *Shamshi*, Tehsil *Bhuntar*, District. *Kullu*, State *Himachal Pradesh* and another was Kaulsingh Rupsing, a Driver by profession from *Himachal Pradesh*. Two *panchas* were also in the team. When the suspects were asked about trolley bags, they admitted that the bags contain wet *charas*. They were informed about their right to be searched before the Magistrate or Gazetted Officer. However, they refused to be searched before the Magistrate or Gazetted Officer.

6. When the trolley bags were searched in the presence of *panch* witnesses by the raiding team, they found several packets containing some black substance. Approximate price of the contraband was

around 1,03,64,300/-. As usual, samples were taken from each of the packets which were duly sealed for forwarding to the Forensic Science Laboratory. A detail *panchanama* was drawn. Statements of the witnesses were recorded and a charge-sheet came to be filed.

7. Special Court, *Pune* rejected Bail Application of the applicant vide an order dated 18th April, 2022.

8. I heard Mr. Mishra, learned Counsel for the applicant and Mr. Palkar, learned A.P.P.

9. Mr. Mishra would argue that what has been seized from the applicant as per prosecution is 2 k.g 73 grams non commercial quantity of *ganja* and, therefore, rigours of Section 37 of the N.D.P.S Act would not attract. According to him, accused No.1 – Lalitkumar Dayanand Sharma and accused No.2 – Kaulsingh Rupsingh alias Bhardwaj and accused No.3 – Rumsingh Dhaniram alias Rumi Thakur were arrested by the raiding team near *Pune* Railway Station. On the basis of the statements of accused No.1 and 2, the present applicant who is original accused No.5 has been arrested. Nothing has been recovered from the applicant or accused

No.4 – Carington Jerri Diabrio. Accused No.3 – Rumsinh Dhaniram alias Rumi Thakur and accused No. 4 - Carington Jeri Diabrio have been already released on bail by the trial Court on 14th October, 2021. There is only one antecedent in respect of the applicant at *Delhi*. The Counsel would also strenuously urge to release the applicant on bail in view of catena of the decisions of this Court and the Supreme Court principally in view of the fact that nothing came to be seized at the behest of the applicant except the alleged recovery of non commercial quantity of *Ganja* and also in light of the fact that *panch* witnesses were not independent.

10. Mr. Palkar, learned A.P.P while strongly objecting the release of the applicant has invited my attention to statement of one Rahul Prakash Chikhalkar recorded on 24th March, 2021 which indicates involvement of the applicant in the instant crime. He also invites my attention to one more statement of Yogesh Suryakant Mungekar who is an employee of “Hotel Dragonfly” at *Andheri*, Mumbai.

11. The record reveals that accused No.3 - Mr. Roomsingh Dhaniram alias Rumi Thakur was arrested by the respondent on 27th February, 2021 on the basis of a statement of accused

No.4 - Mr. Carrington Jeri Diabrio who was arrested on 5th March, 2021.

12. The applicant was initially shown as “wanted”. The record also reveals that no drugs were seized from the applicant, however, on the basis of a disclosure statement dated 12th March, 2021, it revealed that some contraband was concealed in his house at Goa, Officials travelled to the State of Goa and found 2 kgs and 73 grams ganja at the applicant’s place. Since it is a non commercial quantity, rigours of Section 37 (1) (b) (ii) would not be attracted.

13. The only material which *prima facie* shows some nexus is in the form of Call Detail Record without any scripts. It is also material to note that accused Roomsing Dhaniram alias Rumi Thakur and Carrington Jeri Diabrio have already been granted bail by the Trial Court which had attained finality. The applicant, therefore, can be released on the ground of parity. There is nothing on record to suggest that the applicant had either abetted or is part of criminal conspiracy with the co-accused within the meaning of Section 29 of the N.D.P.S Act.

14. It also reveals that there is no compliance of Section 42 of the N.D.P.S Act, meaning thereby, information was received by Head Constable – Santosh Vishnu Lakhe. Counsel for the applicant has strenuously argued that since *Panchas* summoned at the time of conducting the raid are regular and professional *panchas* of Mumbai, who had already acted at the behest of the Police Officers for several raids and pursuant to which false cases under the provisions of the N.D.P.S Act have been registered against many persons.

15. The Counsel would, therefore, place reliance on a decision in the case of **Lawrance D’Souza Vs. The State of Maharashtra**¹. It is trite law that normally the Investigating Officer will take independent *panch* witnesses and in case, he takes pliable witnesses as *panch* witnesses, the entire raid would become suspect and in such a case, it would not be possible to hold the evidence of such witnesses sufficient to base a conviction. Evidence of such witnesses will have to be taken with a pinch of salt.

1 1992 Cri. L.J 399

16. In so far as call detail record is concerned, there cannot be an automatic inference of complicity of the applicant in the crime in the absence of any transcript to that effect. That itself cannot be, even at this stage, taken to be a corroborative material showing complicity of the applicant. Punjab and Haryana High Court in case of **Vikrant Singh Vs. State of Punjab**,² held that call conversations between co-accused *sans* transcript is not corroborative material in the absence of material evidence. Since the applicant is awaiting trial wherein two co-accused have already been enlarged on bail and also in view of the ratio laid down by the Supreme Court in case of **Tofansingh Vs. State of Tamil Nadu**,³ no fruitful purpose would be served in continuing pre-conviction detention of the applicant in the custody.

17. In so far as statements of Rahul Chikhalkar and Yogesh Mungekar are concerned, a bare perusal of the same would reveal that Rahul Chikhalkar, who has a business of co-ordinating the tourists stated that when he had been to *Anjuna* Beach at North *Goa* in the month of March, 2019, he was introduced with the applicant by one Lalitkumar. The applicant was a *Yoga* teacher who

² CRM-M-39657 of 2020

³ AIR (2020) SC 5592

was conducting classes of *Yoga* for foreign tourists. Lalitkumar had informed this witness that the applicant with his help is intending to start *Yoga* Centre for foreign tourists. There were certain meetings between Lalitkumar and this witness and the applicant for opening *Yoga* Centre in the State of *Goa*. Witness further states that in his presence, Lalitkumar had given certain packets to the applicant which had a mark of “555”. The witness had a doubt whether the packets contained *charas*. It was on the basis of information alleged to have been given by Lalitkumar to this witness that those packets contain *charas* would not be sufficient as it would amount to hearsay evidence.

18. Similarly, Yogesh Mungekar, who works as Front Office Assistant at Hotel Dragonfly, Andheri had tendered extract of the hotel register indicating rooms booked by rest of the accused as well as the applicant. That itself will not take the case of the prosecution any further *sans* any acceptable material or link of the applicant with the co-accused.

19. Thus, after having considered the material on record, *prima facie*, there seems to be no such evidence which would be sufficient

enough to refuse bail. I am convinced that the applicant deserves to be released on bail. Consequently, following order is passed.

: ORDER :

- (a) The application is allowed.
- (b) The applicant – Sunny Ashok Khanna be released on executing a P.R bond in the sum of Rs.30,000/- with one or two sureties in the like amount to the satisfaction of the Special Judge (ATS), Pune in connection with C.R. No.13 of 2020 registered with A.T.S, Kalachowki, Mumbai for the offences punishable under Sections 8 (c), 20 (b) (ii) (C) and 29 of the N.D.P.S Act.
- (c) The applicant shall report the concerned Police Station on first Saturday of every month between 10.00 a.m and 1.00 p.m till the charge is framed;
- (d) After framing the charge, applicant shall attend the trial Court scrupulously, unless exempted from appearance;

(e) The applicant shall not tamper with the evidence or attempt to influence or contact any of the witnesses or persons concerned with this case;

(f) The applicant shall surrender his passport, if any, to the Investigating Officer immediately.

(g) The applicant shall furnish his residential address and contact details to the respondent and the Trial Court immediately after his release. In case of change in contact details or residential address, same shall be forthwith informed to the Trial Court and the Respondent.

(h) In case of breach of any of the conditions hereinabove, liberty to the prosecution to seek cancellation of bail of the applicant.

20. The application stands disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]