

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2192 OF 2023

Mohammed Arif Mohammed Yakub Bhujwala	...Applicant
vs.	
The State of Maharashtra	...Respondent

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SUBHASH
PAREKAR

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Mr. Ajay Bhise, for the Applicant.
Mr. S.R. Agarkar, APP, for the Respondent/State.
Mr. Jayesh Pandarkar, API, ATS, Thane Unit.

CORAM : N. J. JAMADAR, J.

DATE : FEBRUARY 8, 2024

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. The applicant, who is arraigned in C.R. No. 8 of 2020 registered with Anti Terrorist Squad, Thane Unit for the offences punishable under sections 120-B of Indian Penal Code, 1860 and sections 2(c), 20, 22 and 29 of Narcotic Drugs and Psychotropic Substance Act, 1985 (NDPS Act, 1985), has preferred this application to enlarge him on bail.

3. On 29th October, 2020 pursuant to a secret information that Zishan Memon was to arrive at Vashi Railway station to sell narcotic drug, a surveillance was conducted on 30th October, 2020. At about 3.10 am Zishan Memon was apprehended. No contraband article was found. However, the photographs, videos and data in the mobile phone found in his possession revealed that he was

trafficking in drugs.

4. On 30th October, 2020 another secret information was received that co-accused Sohail Sayyed, another drug trafficker, was to arrive near Brahmand Circle, Thane-Ghodbandar Road, Thane to sell narcotic. He was accosted. Contraband article, Mephedrone (MD) weighing 60.10 gms, was found in his possession.

5. During the course of investigation, it transpired that the said co-accused was procuring MD from Zishan Memon and he also procured MD from the persons namely Imtiyaz, Guddu, Shahrukh, Majid. They, in turn, were procuring the contraband articles from Chinku Pathan.

6. The investigating agency claims that on 20th January, 2021, Chinku Pathan @ Parvez Khan was apprehended. Contraband article was found in his possession. Parvez Khan disclosed that the applicant had supplied the drugs to him for sell, and was also financing the syndicate. Thereupon, the applicant came to be arrested in this crime as well.

7. Mr. Bhise, learned counsel for the applicant submitted that there is no connection whatsoever between the applicant and the persons from whose possession the contraband articles were recovered. The applicant has been implicated solely on the basis of statement of co-accused Chinku Pathan in an altogether different

matter. There is not an iota of material to invoke the provisions contained in section 29 of the NDPS Act, 1985. On the basis of alleged antecedents, the applicant has been falsely roped in. Such antecedents, in the absence of any prima facie case in the matter at hand, do not justify deprivation of personal liberty. To lend support to this submission, reliance was sought to be placed on the order dated 21st September, 2021 passed in Criminal Bail Application No. 778 of 2021.

8. As against this, Mr. Agarkar, the learned APP, submitted that the applicant is the kingpin of the drug syndicate. He had supplied the contraband article to Chinku Pathan who, in turn, supplied the same to the persons from whom co-accused Sohail had purchased the contraband article which came to be eventually seized under seizure panchanama. Since all the procedural safeguards have been observed scrupulously, the question as to whether the applicant had entered into a conspiracy to indulge in drug trafficking is a matter for adjudication at the trial. Having regard to the antecedents of the applicant, he does not deserve to be released on bail.

9. I shall advert to the aspect of antecedents of the applicant a little later.

10. First and foremost, it has to be seen whether there is prima facie material to implicate the applicant for the offences for which

he has been arraigned in the instant case. Indisputably, the prosecution does not claim that any contraband article was found in possession of the applicant or recovered at the instance of the applicant. The search and seizure in question relates to recovery of 60.10 gms MD from the co-accused Sohail only. It is the element of criminal conspiracy which is required to be delved into albeit prima facie.

11. It is not the case that Sohail had named the applicant as one of the persons from whom he had allegedly procured the contraband. Nor the identity of the applicant was allegedly revealed when secret information in respect of Zishan Memon was received. On the contrary, it is the stated case of the prosecution that co-accused Chinku Pathan was arrested by NCB in another crime. In the said matter, the said co-accused Chinku Pathan had disclosed that the incriminating articles recovered from him were supplied by the applicant and the later also financed the syndicate.

12. Evidently, the prosecution case rests on the statement of co-accused. It is not necessary that in every case the person, who is sought to be roped in by invoking section 29 of the NDPS Act, 1985, must be found in possession of the contraband article. However, there should be prima facie material to establish the nexus between the applicant and the persons who were found in possession of the

contraband articles, as an abettor or confederate in the criminal conspiracy. In the case at hand, prima facie, no such material is forthcoming. Thus, the submission on behalf of the applicant that prima facie there is no material to connect the applicant with the alleged offences thus carries substance.

13. At this stage, an endeavour was made by the learned APP to draw home the point that the antecedents of the applicant justify an inference that the applicant was actively involved in drug trafficking and also a confederate in the conspiracy.

14. In the report submitted by the investigating officer, it was submitted that four crimes have been registered against the applicant. First, C.R. No. 279 of 2001 for the offences punishable under sections 392, 394 and 397 read with 34 of the Indian Penal Code and section 3 read with 25 of Arms Act, wherein the applicant was discharged on 20th July, 2004. Second, C.R. No. 166 of 2019 for the offences punishable under section 8(c) and 22 of NDPS Act, 1985. Third C.R. No.988 of 2020 registered in Kashimira police station for the offence punishable under sections 8(c), 20 and 22(c) of NDPC Act, 1985. Fourth, C.R. No. 7 of 2021 registered with NCB, Mumbai for the offences punishable under section 8(c), 21(a), 22(c), 27(a) and 29 of NDPS Act, 1985.

15. It is pertinent to note that out of three crimes registered

against the applicant for the offences punishable under the NDPS Act, 1985 in C.R. No. 166 of 2019 registered with Pydhonie police station, the applicant was discharged by an order dated 6th August, 2021 by the learned Special Judge in Special Case No. 201 of 2020. In C.R. No. 988 of 2020 registered with Kashimira police station on 18th June, 2021 report under section 169 of the Code was purportedly filed and by an order dated 25th August, 2021 the learned Special Judge directed the investigating officer to submit a report before the learned Magistrate under section 173(2) read with 169 of the Code of Criminal Procedure. Third C.R. No. 7 of 2021 registered with NCB, Mumbai appears to be the same in which the co-accused Parvez @ Chinku allegedly named the applicant as the supplier.

16. The aforesaid being the developments in the crimes registered against the applicant, the prosecution can hardly draw any mileage from the alleged antecedents of the applicant so as to rope him in by invoking the provisions contained in section 29 of the NDPS Act, 1985. In fact, apart from the subject crime, C.R. No. 7 of 2021 registered with NCB appears to be the only crime registered against the applicant for the offences punishable under NDPS Act, 1985.

17. I find substance in the submission of Mr. Bhise that the antecedents of the applicant are not of such nature as to dis-entitle

the applicant from seeking bail. The applicant was arrested on 18th February, 2021. Almost three years period has been elapsed. It is unlikely that the trial can be concluded within a reasonable period.

18. In the totality of the circumstances, in my view, there are reasonable grounds to believe that the applicant may not be guilty of the offences for which he has been arraigned in this case. Having regard to the developments in the crimes which have been registered against the applicant, it can not be said that the applicant will indulge in similar offences, if released on bail. The twin test thus stands satisfied.

19. In view of the above, I am inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application stands allowed.

2] The applicant Mohammed Arif Mohammed Yakub Bhujwala be released on bail in C.R. No. 8 of 2020 registered with Anti Terrorist Squad, Thane Unit, on furnishing a P.R. Bond of Rs. 1,00,000/- with one or more sureties in the like amount.

3] The applicant shall mark his presence at Anti Terrorist Squad, Thane Unit on the first Monday of every month between 11 am to 1 pm till conclusion of the trial.

4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

5] 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.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)