

Sayali Upasani

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

BAIL APPLICATION NO. 2426 OF 2023

Mayankkumar Vijay Rungatha	...Applicant
Versus	
The State of Maharashtra	...Respondent

BAIL APPLICATION NO. 1933 OF 2023

Ritik @ Rajabhaiyya Rajesh Khanna	...Applicant
Versus	
The State of Maharashtra	...Respondent

BAIL APPLICATION NO. 2117 OF 2023

Nileshkumar Santosh Singh	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Madan Gupta i/b Shrishti Singh, for Applicant in
BA/2117/2023.

Mr. S. S. Dube with Mr. Pankaj Mishra and Nagendra Dube,
for Applicant in BA/1933/2023.

Mr. S. R. Aagarkar, APP for State/Respondent.

Mr. A. R. Kapadnis i/b Mr. Shekhar S. Bhandary, for
Applicant in BA/2426/2023.

Mrs. G. P. Mulekar, APP for State.

CORAM:- N. J. JAMADAR, J.

DATED:- 1st FEBRUARY, 2024.

ORDER:-

- 1) Heard the learned Counsel for the applicants and the learned APP for the State.
- 2) The applicants have preferred these applications to enlarge them on bail. Mayankkumar Vijay Rungatha, the applicant in BA No. 2426 of 2023, is accused No. 7, Ritik @ Rajabhaiyya Rajesh Khanna, the applicant in BA No. 1933/2023 is accused No.8 and Nileshkumar Santosh Singh, the applicant in BA No.2117 of 2023, is accused No.9, in CR No. 675 of 2022 registered with Kashimira police station, Thane, for the offences punishable under Sections 21 (c) and 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 ("the Act, 1985") and Sections 420, 465, 468, 471 and 473 read with Section 34 of the Indian Penal Code, 1860.
- 3) Ten persons have been arraigned in CR No. 675 of 2022. The indictment against the accused is that on 27th September, 2022, while the Kashimira police were on patrolling, at about 4.00 pm, near Sharmila Pagi Compound, Kashimira, a Tempo bearing registration No. MH-48-CB-4402 and Car bearing registration No. MH02-BY-3422 were found parked adjacent to each other. The police party noticed that the goods from the Tempo were being transferred to the car. The first informant

entertained suspicion. Upon enquiry with the persons, who were at the wheel of the said vehicles, they gave evasive answers. The police party checked the goods being transferred. It transpired that there were 32 boxes containing bottles of RX Chlorpheniramine Malete and Codeine Phosphate Syrup PHENSIREST SYRUP COUGH 100 ml each. There were 36 boxes in the car containing RX Chlorpheniramine Malete and Codeine Phosphate Syrup RECOKUF COUGH SYRUP 100 ml each. It transpired that accused Nos 1 and 2, in whose possession the said contraband articles were found had taken delivery of the boxes from Om Logistics Courier Company. To facilitate the procurement of the contraband, false Challans were prepared. Zameer Rashid Shaikh – (A-3) had affixed a bogus stamp on those Challans.

4) During the course of investigation, the complicity of the applicants was revealed. The applicant – Mayankkumar Rungatha (A-7) and Ritik @ Rajabhaiyya Rajesh Khanna (A-8) had procured the contraband articles with the assistance of Shashank Gopalpati Tripathi (A-5), who was providing Courier services. Applicant- Nileshkumar Santosh Singh (A-9) was a former employee of Om Logistics, through which the contraband articles were procured.

5) The learned Counsel for the applicant- Mayankkumar Rungatha (A-7) submits that the applicant has been roped in on the basis of the statement of the Receptionists of a Hotel where the applicant and co-accused Shashank Tripathi (A-5) had allegedly stayed on the night of 22nd September, 2022. There is no other material to connect the applicant – Mayankkumar (A-7) with the alleged contraband articles.

6) Mr. Dubey, the learned Counsel for the Ritik @ Rajabhaiyya Rajesh Khanna (A-8) submits that the applicant has been roped in for being a friend of Mayankkumar (A-7). There is no nexus whatsoever between the applicant and the contraband articles, or for that matter, any of the co-accused.

7) The learned Counsel for Nileshkumar Santosh Singh (A-9) submits that the applicant has been roped in for being a former employee of Om Logistics. There is no material to show that the applicant had procured the contraband articles. At best, the applicant – Nileshkumar Singh (A-9) can be said to have referred the co-accused to avail the transport services of Om Logistics.

8) The learned Counsel for the applicants further submit that the co-accused Zameer Rashid Shaikh – (A-3), who had allegedly fabricated the Challans, was released on bail by this Court by an order dated 16th October, 2023 in Bail Application No. 1853 of

2023. The role attributed to the applicants is of a relatively lessor degree. Therefore, the applicants deserve to be released on bail.

9) Mr. Mulekar, the learned APP, resisted the prayer for bail. It was submitted that the role of Zameer Rashid Shaikh – (A-3), who has been released on bail, was quite distinct. There are allegations against the applicants that they had forwarded the contraband articles from Varanasi to Mumbai. The applicants are thus involved in the transportation and procurement of contraband articles. Therefore, they do not deserve the relief of bail.

10) Prima facie, the interdict contained in Section 37 of the NDPS Act, 1985, does not operate qua the applicants. Indisputably, the applicants were not found in possession of the contraband articles. The statement of a Receptionists of a Hotel that prior to five days of the occurrence, applicants - Mayankkumar (A-7) and Shashank Tripathi (A-5) stayed together in the Hotel is not prima facie sturdy enough to bear the weight of the accusation of conspiracy. As regards the applicants - Ritik @ Rajabhaiyya Rajesh Khanna (A-8) and Nileshekumar Santosh Singh (A-9), the material pressed into service does not appear to be adequate to make out a prima facie case. I find substance in the submission on behalf of the applicants that whether there is

a nexus between the applicant and the alleged offences is a matter for adjudication at the trial.

11) The learned APP fairly submitted that there are no antecedents to the discredit of any of the applicants. Therefore, an inference becomes justifiable that the applicants will not indulge in identical offenses, if released on bail.

12) Moreover, in view of the release of the co-accused - Zameer Rashid Shaikh – (A-3) on bail, the claim for parity also becomes sustainable.

13) Applicant- Mayankkumar (A-7) and Ritik @ Rajabhaiyya Khanna (A-8) have been in custody since 12th November, 2022 and applicant Nileshkumar Singh (A-9) has been in custody since 26th January, 2023. Having regard to the nature of the accusation, the number of accused and the evidence which the prosecution may be required to adduce, in this case, as well as the large pendency of the cases, it is unlikely that the trial can be concluded within a reasonable time. Since investigation is complete for all intent and purpose, further detention of the applicants does not seem warranted.

14) I am, therefore, impelled to exercise the discretion in favour of the applicants.

15) Hence, the following order:

: O R D E R :

- (i) The applications stand allowed.
- (ii) The applicants Mayankkumar Vijay Rungatha, Ritik @ Rajabhaiyya Rajesh Khanna and Nileshkumar Santosh Singh be released on bail in CR No. 675 of 2022 registered with Kashimira police station, Thane, for the offences punishable under Sections 21 (c) and 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 and Sections 420, 465, 468, 471 and 473 read with Section 34 of the Indian Penal Code, 1860, on furnishing a P.R. Bond in the sum of Rs.1,00,000/- each with one or two sureties in the like amount.
- (iii) The applicants shall mark thier presence at the Kashimira Police Station, Thane on the first Monday of every month between 11.00 am to 1.00 pm, till the framing of the charge.
- (iv) The applicants 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 applicants shall not tamper with evidence.

(v) On being released on bail, the applicants shall furnish their contact numbers and residential addresses to the Investigating Officer and shall keep them updated, in case there is any change.

(vi) The applicants shall not indulge in identical activities for which they have been arraigned in this case.

(vii) The applicants shall attend the trial regularly.

(vii) The applicants shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(vi) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of 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 observations made hereinabove.

[N. J. JAMADAR, J.]