

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2894 OF 2023

Saddam Hussain Qureshi	...Applicant
<i>Versus</i>	
Union of India & Anr.	...Respondents

Mr. Shreerat Kamath a/w. Ms. Puja Yadav, Advocates, for the Applicant.
 Ms. Ameeta Kuttikrishnan, Advocate, for the Respondent No.1-UOI.
 Mr. Shriram S. Chaudhari, APP, for the Respondent No.2-State.

CORAM: MADHAV J. JAMDAR, J.
DATED : 17th APRIL 2024

P. C.:

1. Heard Mr. Kamath, learned Counsel for the Applicant and Mr. Chaudhari, learned APP for the Respondent-State.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1.	C. R. No.	NCB/MZU/CR-01/2023
2.	Date of registration of F.I.R.	02/02/2023
3.	Name of Police Station	NCB, Mumbai Zonal Unit
4.	Section/s invoked	8(c), 21(c), 22(c), 28 and 29 of the Narcotic Drugs and

		Psychotropic Substances Act, 1985 (“NDPS Act”)
5.	Date of incident	02/02/2023
6.	Date of arrest	13/02/2023
7.	Date of filing of Charge-sheet	July 2023

3. The prosecution case is set out in paragraph No.2 of the Order dated 15th September 2023 passed by the learned Special NDPS Judge, Panvel-Raigad below Exhibit-3 in Special NDPS Case No.153 of 2023. The said paragraph No.2 reads as under:-

“2. Brief facts of the case are that a specific information was received that by courier parcel of Alprazolam tablets is lying at VRL Logistics Kalamboli, and one person by name Santosh Yadao was going to collect it. NCB Mumbai conducted survey lance and intercepted the said person alongwith seizure of 132000 tablets of Alprazolam on 02/02/2023. Also 2400 bottles of Codeine based Onerex cough syrup commercial quantity was also seized. Accused No.1 was arrested on 03/02/2023. notice was issued u/se. 67 of NDPS Act to the present accused and co-accused No.3. Statements were recorded, which disclosed involvement of the all accused persons for the purpose of conspiracy, procurement, possession, transportation and trafficking of said seized contraband.”

4. It is the submission of Mr. Kamath, learned Counsel for the Applicant that the only role attributed to the present

Applicant/Accused No.2 is that he was in contact with one Siraj and that he was a dealer in Mumbai. It is alleged that there were several calls exchanged between the Applicant and one Salman *alias* Babu. It is the submission of Mr. Kamath, learned Counsel for the Applicant that the Applicant was apprehended solely on the basis of a statement by Accused No.1 recorded under Section 67 of the NDPS Act. He submitted that there is no possession or recovery of contraband at the instance of the Applicant. No monetary trail or contact with Accused No.1 have been established. He submitted that there is no direct evidence on record to link the Applicant with the main or other Accused persons. He submitted that there is no direct or indirect evidence on record against the Applicant to show the actual or constructive possession over the contraband found in possession of the Accused No.1. He submitted that the statement of the Applicant recorded under Section 67 of the NDPS Act cannot be held against the Applicant. He submitted that there are no antecedents against the Applicant under the NDPS Act. He relied on the decision of the Supreme Court of India in the case of *Narcotics Control Bureau v. Pallulabid Ahmad Arimutta*.¹

1 (2022) 12 SCC 633

5. On the other hand, Ms. Kuttikrishnan, learned Counsel for the Respondent No.1-Union strongly opposed the Bail Application. She submitted that in the present case, 1,32,000 tablets of Alprazolam and 3,840 bottles of CBCS have been seized, and that these quantities are much larger than the commercial quantity as specified under the NDPS Act. She submitted that Accused No.1 was intercepted and found in possession of the said contraband and the same was to be delivered to one Salman Bhai. The present Applicant was an associate of said Salman Bhai and was also involved in selling and purchasing of Alprazolam tablets along with CBCS bottles. She submitted that the statement of the Applicant was recorded before the Investigating Officer under Section 67 of the NDPS Act and the Applicant was immediately arrested on 13th February 2023. She submitted that a voluntary statement of the Applicant recorded under Section 67 of the NDPS Act shows the involvement of the Applicant in the offence in question. She therefore submitted that rigors of Section 37 of the NDPS Act are applicable and therefore, the bail Application be rejected.

6. Mr. Chaudhari, learned APP for the Respondent No.2-State adopted the submissions of Ms. Kuttikrishnan, learned Counsel for the Respondent No.1-Union.

7. Section 37 of the NDPS Act is as follows:-

“37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the

limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

(Emphasis added)

Thus, as per Section 37 of the NDPS Act, following requirements are mandatorily to be complied with before releasing the Accused on bail:-

(i) The Public Prosecutor is to be given an opportunity to oppose the application seeking bail;

(ii) Where the Public Prosecutor opposes the application:-

(a) The court is required to record satisfaction that there are reasonable grounds for believing that the Applicant is not guilty of such offence;

(b) The Court is required to record satisfaction that the Applicant is not likely to commit any offence while on bail.

8. In the present case, Ms. Kuttikrishnan, learned Counsel for the Respondent No.1-Union has filed an affidavit-in-reply dated 18th January 2024 of Mr. Satish Kumar, Intelligence Officer, Narcotics Control Bureau (NCB), Mumbai and she has opposed the

Bail Application by raising several contentions. Therefore, the first requirement is complied with.

9. Thus, what is required to be considered is that whether this Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

10. Before considering the merits of the case, it is required to be noted that the Supreme Court of India in case of *Pallulabid Ahmad Arimutta* (supra) has held that confession/voluntary statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act and therefore, arrest made on the basis of such inadmissible evidence i.e. on the basis of confession/voluntary statement is not legal. The relevant paragraph Nos.11 and 12 of *Pallulabid Ahmad Arimutta* (supra) read as under:

“11. Having gone through the records along with the tabulated statement of the respondents submitted on behalf of the petitioner NCB and on carefully perusing the impugned orders passed in each case, it emerges that except for the voluntary statements of A-1 and A-2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears,

prima facie, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking. It has not been denied by the prosecution that except for the respondent in SLP (Crl.) No. 1569 of 2021, none of the other respondents were found to be in possession of commercial quantities of psychotropic substances, as contemplated under the NDPS Act.

12. It has been held in clear terms in Tofan Singh v. State of T.N. [Tofan Singh v. State of T.N., (2021) 4 SCC 1 : (2021) 2 SCC (Cri) 246] , that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail.

(Emphasis added)

11. In the present case, even as per the prosecution case, only following two circumstances are incriminating as far as the Applicant is concerned:-

(1) The Applicant was in direct contact with the wanted Accused person namely Siraj.

(2) The Applicant has made a voluntary statement under Section 67 of the NDPS Act.

12. *Prima facie*, there is substance in the contention of Mr. Kamath, learned Counsel for the Applicant that the above two

circumstances do not connect the Applicant with the offence in question. The role of wanted Accused person Siraj is not clear. Voluntary statement of Applicant recorded under Section 67 of the NDPS Act is not admissible.

13. It is also required to be noted that there is no possession or recovery of contraband at the instance of the Applicant and that Accused No.1 was intercepted and found in possession of the contraband in question.

14. Thus, there are reasonable grounds for believing that the Applicant is not involved in the said offence.

15. Mr. Kamath, learned Counsel for the Applicant submitted that there are no other antecedents under the NDPS Act. There is one antecedent bearing C.R. No.431 of 2022 registered with Shivaji Nagar Police Station, Mumbai under Section 307, 323, 504, 506 read with 34 of the *Indian Penal Code, 1860*. However, on the basis of that, it cannot be said that the Applicant is likely to commit an offence under the NDPS Act. The Applicant does not

have any criminal antecedents under the NDPS Act. Thus, the second requirement is also fulfilled.

16. The Applicant does not appear to be at risk of flight.

17. Accordingly, the Applicant can be enlarged on bail by imposing conditions.

18. In view thereof, the following order:-

ORDER

(a) The Applicant – Saddam Hussain Qureshi be released on bail in connection with C.R. No.NCB/MZU/CR-01/2023 registered with Narcotics Control Bureau (NCB), Mumbai on his furnishing PR. Bond of Rs.1,00,000/- with one or two local solvent sureties in the like amount.

(b) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated,

in case of any change thereto.

- (c) The Applicant shall report to the Narcotics Control Bureau (NCB), Mumbai once a week on every Monday between 11:00 a.m. and 1:00 p.m. until the conclusion of the trial.
- (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 such a person from disclosing the facts to the Court or to any Police personnel.
- (e) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (f) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.
- (g) The Applicant shall surrender his passport, if any, to

the Investigating Officer.

19. The Bail Application is disposed of accordingly.

20. It is clarified that observations made herein are *prima facie*, and the Trial Court shall decide the case on its merits, uninfluenced by the observations made in this order.

[MADHAV J. JAMDAR, J.]