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

**BAIL APPLICATION NO.4467 OF 2021
WITH
INTERIM APPLICATION NO.4563 OF 2023**

KERRY KELVIN MENDES

..APPLICANT

VS.

1. THE UNION OF INDIA

2. THE STATE OF MAHARASHTRA

..RESPONDENTS

Adv. Pushpa Ganediwala a/w. Adv. Anshu Agrawal, Adv.
Chaitanya Purankar, Adv. Suvidha Patil i/b. Patil Associates
for the applicant.

Adv. Rahul Tiwari for respondent No.1-NCB.

Mr. S. H. Yadav, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : APRIL 10, 2024.

P.C. :

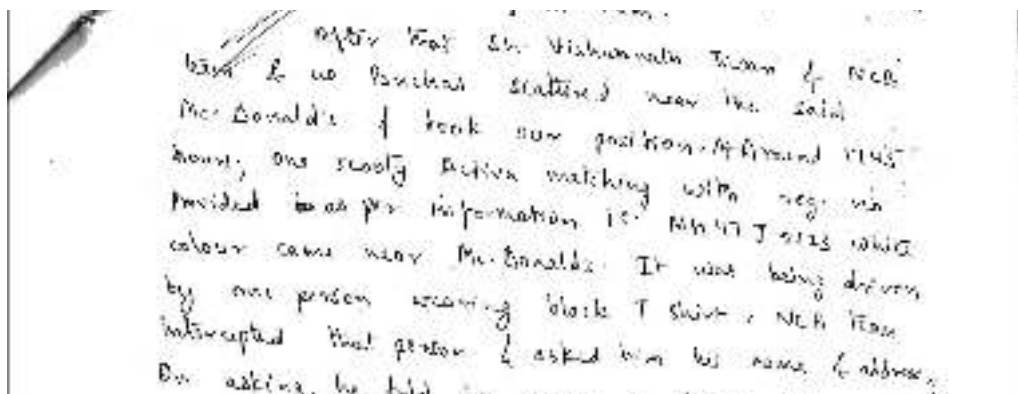
1. Heard learned counsel for the applicant, learned
counsel for respondent No.1 and learned APP for the State.

2. This is an application for bail in respect of the offence
punishable under Sections 8(c) read with Section 20(b)(ii)
(A), 22(c), 27(A), 28 and 29 of the Narcotic Drugs and
Psychotropic Substances Act, 1985 (hereafter "NDPS Act",
for short) registered vide C.R. No.NCB/MZU/CR-36 of 2020
with Narcotics Control Bureau, Mumbai Zonal Unit, Mumbai.

3. The applicant is the accused No.1. The applicant was

arrested on 23.11.2020. On 22.11.2020 when the specific information was received by the NCB Officials the trap was laid near McDonalds. The applicant was intercepted. The quantity of 0.3 gms LSD (Lysergide) which is a psychotropic substance and 0.95 gms green leafy substance which was tested to be ganja was recovered. The LSD recovered from the applicant is admittedly a commercial quantity. 0.2 gms more than the minimum of the commercial quantity was recovered from the applicant. The ganja recovered is a non commercial quantity.

4. Learned counsel for the applicant submitted that there is non-compliance with Section 50 of the NDPS Act at the time of search and seizure. My attention is invited to the panchanama dated 22.11.2020 which is at page 41 of the paper-book. The relevant portion of the panchanama reads thus :-



After that Sh. Vishwanath Tripathi of NCB
took the panchanama station near the said
McDonalds & took our position. At around 11.45
hours, one scooter driver matching with reg. no.
provided by us for information is. MH 47 J 5123 white
colour came near McDonalds. It was being driven
by one person wearing black T shirt. NCB team
intercepted that person & asked him his name & address.
On asking, he told...

On asking, he told his name as Kerry Edwin Mendes, s/o Kevin Mendes, R/o Mendes House, 2/136, Marve Road, Kharodi Village, Opp. Nagara Dist. Malad West, Kharodi, Mumbai - 400057. His height was also around 5 feet 6 1/2 inches. Then Sh. Vishwanath Tiwari introduced himself & his team members to him & showed ID cards. Then Sh. Vishwanath Tiwari intimated him about his information that he is coming here to deliver LCB & ganja. On this, Kerry Mendes took out his wallet from his back pocket of his jeans & from his black colour wallet he took out one small zip lock transparent polythene pouch containing

P-1 22/11/20 P-2 22/11/20 Kerry - Mendes 22/11/20 22/11/20

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INTELLIGENCE



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some blots. On counting, there were 20 multi coloured blots in it. On asking Kerry Mendes about it, he said that it is LCB blot & he has come to deliver said blot to one person. He was going to get 25,000/- for these 20 blots. He handed the blots to Sh. Tiwari.

Thereafter he also took out one small polythene packet from his wallet which contained dark green colour leafy substance which looked like ganja & handed over to Sh. Vishwanath Tiwari. He also handed over one brown colour rolling paper & one semi / less than half broken cigarette. He told that ganja & rolling paper & that broken cigarette is for his own consumption. He further told that he is here to deliver the LCB to someone whom he doesn't know properly & has only met once before. His name is Ahmed Shaikh.

5. Learned counsel for the respondent No.1-NCB submitted that there is no requirement of following Section 50 of the NDPS Act in the present case. According to learned counsel, the search was not from the person of the accused. It is the submission of learned counsel that after the applicant was questioned, he voluntarily handed over the substance to the NCB officials. Thereafter, the applicant was taken to the police station when further procedure was followed. It is submitted that in such a case it is not open for the applicant to raise a contention that there is breach of Section 50 of the NDPS Act. Learned counsel submitted that even the conduct of the applicant post the trap disentitles him from any relief of bail. It is submitted that the applicant is a part of a well organised syndicate dealing in drugs. It is further submitted that after the incident three persons came to the spot and had a heated argument with the NCB officials. They went to the extent of assaulting one of the official. An attempt was made to take away the contraband which was seized from the applicant. It is material to note that the applicant is not the accused in

the FIR which is filed against these three persons who had an altercation with the NCB officials.

6. A reading of the panchanama reveals that the raiding party intimidated the applicant about the information that he is coming to spot to deliver LSD and ganja. On this the applicant took out his wallet from the back pocket of his jeans. From this black coloured wallet he took out one small zip lock transparent polythene pouch containing some blots. Prima facie it appears that on being informed the purpose of the raid, the applicant took out a wallet from his pocket. In my opinion in such circumstances the NCB officials should have apprised him of his right under Section 50 of the NDPS Act. There is absolutely no whisper about the compliance of Section 50 of the NDPS Act.

7. According to me, in the facts and circumstances of the present case, in view of the non-compliance of Section 50 of the NDPS Act as well as on the ground of long incarceration the rigors of Section 37 of the NDPS Act can be overcome. Moreover, the applicant was arrested on 23.11.2020 and is now in custody for more than three years and four months.

I am informed that even the charge has not been framed. The trial is not likely to conclude soon. There are no criminal antecedents reported against the applicant and in any case as I propose to impose stringent conditions, it is unlikely that the applicant will commit any offence during the pendency of the trial. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Kerry Kelvin Mendes in connection with C.R. No.NCB/MZU/CR-36 of 2020 registered with Narcotics Control Bureau, Mumbai Zonal Unit, Mumbai shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more sureties in the like amount.
- (c) The applicant shall attend the Investigating Officer of Narcotics Control Bureau, Mumbai Zonal Unit, Mumbai once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m.
- (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 him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, 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.

(f) Except for attending the trial and for the purpose of reporting to the Investigating Officer, the applicant shall not enter the jurisdiction of Mumbai/Mumbai Suburban District after being released on bail, till further orders of the trial Court. If an application for modification of this condition is made to the trial Court the same be considered on its own merits.

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

8. The bail application is disposed of.
9. The interim application is also disposed of.

(M. S. KARNIK, J.)