

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3386 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Date: 2024.03.16
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Rajesh Kumar alias Rahul @ Vicky
Kanhaiyalal Yadav

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Sumit Kothari, a/w Rajendra Gurjar, for the Applicant.
Mr. Prashant Jadhav, APP for the State/Respondent No.1.

CORAM: N. J. JAMADAR, J.

DATED: 14th MARCH, 2024

ORDER:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.
2. The applicant – accused No.10, who is arraigned in CR No.675 of 2022 registered with Kashimira Police Station for the offences punishable under Sections 21(c) and 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act, 1985”) and Sections 420, 465, 468, 471 and 473 read with Section 34 of the Indian Penal Code, 1860 (“the Penal Code”), has preferred this application to enlarge him on bail.

3. The indictment against the applicant and nine co-accused is that, on 27th September, 2022, while Kashmiri Police were on patrolling, at about 4.00 pm. near Sharmila Pagi Compound, Kashmiri, a tempo bearing registration No.MH-48/CB-4402 and a car bearing registration No.MH-02/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. Upon inquiry, the accused Nos.1 and 2 who were at the wheel of the said vehicles gave evasive answers. Upon search, the police found 32 boxes containing bottles of RX Chlorpheniramine Maleate and Codeine Phosphate Syrup Phensirest Syrup Cough 100 ml each in the tempo. 36 boxes of RX Chlorpheniramine Maleate and Codeine Phosphate Syrup Recokuf Cough Syrup 100 ml each, were found in the car.

4. The investigation revealed that out of the seized contraband article 36 boxes of Recokuf Cough Syrup were procured by the applicant from Aman Chaurasiya and forwarded to Nileshkumar Santosh Singh (A9).

5. The learned Counsel for the applicant submitted that five co-accused including Mayankkumar Rungatha (A7), Ritik @ Rajabhaiyya Rajesh Khanna (A8), Nileshkumar Santosh

Singh (A9) to whom the applicant had allegedly forwarded the contraband article, have been released on bail. No contraband article was found in possession of the applicant. Therefore, the applicant deserves to be enlarged on bail.

6. Apart from above named accused, co-accused Munnakumar Yadav (A6) and Jamir Shaikh (A13), who had allegedly affixed bogus stamps on the challan have also been released on bail by this Court. Evidently, the applicant was not found in possession of the contraband articles. The person to whom the applicant had allegedly delivered the contraband articles namely Nileshkumar Singh (A9) has been released on bail. Accused No.9 had, in turn, allegedly delivered the contraband article to Munnakumar Yadav (A6), who allegedly transported the contraband articles to Mumbai through Om Logistic Ltd. Munnakumar Yadav (A6) has also been released on bail.

7. In the backdrop of the nature of the accusation against the applicant and the fact that co-accused, especially, accused Nos.6 and 9, have been released on bail, the claim for parity appears justifiable. In the totality of the circumstances, the interdict contained in Section 37(1)(b) may not be attributed.

8. I am, therefore, inclined to exercise the discretion in favour of the applicant.

9. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in CR No.675 of 2022 registered with Kashimira Police Station, on furnishing a P.R. Bond of Rs.30,000/- with one or more sureties in the like amount to the satisfaction of the learned Magistrate.
- (iii) The applicant shall mark his presence at Kashimira Police Station on the first Monday of every alternate month between 11.00 am to 1.00 pm till framing of the charge.
- (iv) The applicant shall not tamper with the prosecution evidence. 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.
- (v) 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.

- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) The applicant shall not indulge in identical activities for which he has been arraigned in this case.
- (viii) 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 stands disposed.

[N. J. JAMADAR, J.]