

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3388 OF 2023

Shravan Gupta	
S/o Late Lallan Prasad Gupta	...Applicant
vs.	
Union of India and Others	...Respondents

Mr. Kiran Gogavale, for the Applicant.
Mr. Ashish Chavan, SPP for Respondent no. 1-UOI.
Ms. Supriya Kak, APP, for the Respondent-State.

CORAM : N. J. JAMADAR, J.

DATE : 2nd May, 2024

P.C.:

1. Heard the learned Counsel for the applicant, the learned SPP for the respondent no. 1-UOI and the learned APP for the State.
2. The applicant, who is arraigned in NDPS Special Case no. 301 of 2021 arising out of NCB/MZU/CR-20/2020 for the offences punishable under Sections 20(c), 27, 28 and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act, 1985), has preferred this application to enlarge him on bail.
3. On 15th September 2020, specific information was received that on that day between 4 to 5 pm., a person named 'Baliram Yadav' alias Balli, was to come near the Sports Complex Bus Stand, Bhayander (East) to deliver 2 kg Charas to Avinash Singh alias Chhotu. Description of the features of Avinash Singh alias Chhotu was furnished. Pursuant to the information, after compliance with

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the provisions of the NDPS Act, 1985, a surveillance was conducted.

4. The co-accused - Avinash Singh alias Chootu came near the Sports Complex Bus Stand, Bhayander (East). After a while the person who was to deliver the contraband substance came thereat. The said person delivered the contraband substance to Avinash Singh alias Chhotu. However, taking undue advantage of the rush at the said spot, the said person fled away. Co-accused - Avinash was accosted. He was apprised of his right to be searched before the nearest Magistrate or Gazetted Officer. As accused no. 1 - Avinash declined to avail the said right, a search was conducted. In the bag which accused No. -1 - Avinash was carrying, 8 rectangular packets were found. The substance in the said packets appeared to be Charas. A portion was scraped out and tested. The result was positive for Charas.

5. Upon enquiry, Avinash - A1 informed that the contraband was delivered by Baliram Yadav alias Balli. After a while Baliram Yadav alias Balli called Avinash on his mobile phone and informed him that one of his associates would reach Khau Galli to collect the money for the contraband, which was delivered to Avinash. At about 5.25 pm., the applicant - Shravan Gupta came near the auto rickshaw in which Avinash was sitting, to collect the amount. The applicant was accosted.

6. However, in the search of the applicant no contraband was found.

7. The learned Counsel for the applicant submitted that there is no material to connect the applicant with the recovery of the alleged contraband article or Avinash - A1. The prosecution solely relies on the statement made by the co-accused, which is not a legal evidence. The applicant has been in custody since 16th September 2020. Therefore, the applicant be enlarged on bail.

8. In opposition to this, the learned Special Public Prosecutor submitted that if the statements of the co-accused are considered in conjunction with available material on record, the complicity of the applicant can be said to have been prima facie made out. As commercial quantity was found in possession of co-accused - Avinash, and the applicant was arrested while he had come to collect the cash amount from Avinash, the interdict contained in Section 37 of the NDPS Act, 1985, comes into play.

9. I am afraid to accede to these submissions on behalf of the prosecution. Prima facie apart from the statements of the co-accused, there is no other material to connect the applicant either with the contraband article or the co-accused. It is necessary to note that Avinash did not name the applicant. The prosecution case is that Baliram Yadav alias Balli had sent the applicant to collect the

amount from accused no. 1 - Avinash Singh. Even if the prosecution case is taken at par, a further question as to whether the applicant had known that the amount, he was to collect from Avinash - (A1), was the price of the contraband article allegedly procured by Avinash from Baliram Yadav alias Balli would warrant adjudication at the trial.

10. In the aforesaid view of the matter, I am inclined to hold that there a substantial probable cause to believe that the applicant may not guilty of the offences for which he has been arraigned. The applicant has no antecedents. Thus, the Court may justifiably draw an inference that the applicant may not indulge in identical offences, if released on bail. The applicant has been in custody since 16th September 2000. It is unlikely that the trial can be concluded within a reasonable period. I am, therefore, inclined to release the applicant on bail.

11. Hence the following order.

:O R D E R :

- (i) The application stands allowed.
- (ii) The applicant be released on bail in NDPS Special Case no. 301 of 2021 arising out of NCB/MZU/CR-20/2020 for the offences punishable under Sections 20(c), 27, 28 and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985,

on furnishing a P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount, to the satisfaction of the learned trial Court.

(iii) The applicant shall mark his presence at the Office of NCB on the first Monday of every month between 10.00 am to 12.00 noon for a period of two years or till conclusion of trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(v) The applicant shall not indulge in the identical activity for which he has been arraigned in this case.

(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 co-accused and the trial court shall not be influenced by any of the observations made hereinabove.

(N. J. JAMADAR, J.)