



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.651 OF 2024**

Christina Francis Macglin
@ Ayesha @ Simran
versus

... Applicant

The State of Maharashtra

... Respondent

WITH
BAIL APPLICATION NO.2905 OF 2023

Rajkumar Laxman Rajhuns
versus

... Applicant

The State of Maharashtra

... Respondent

Mr. Rajendra Bidkar for Applicant in BA 651 of 2024.

Mr. Ashok Mundargi, Sr. Advocate with Mr. Ayaz Khan, Mr. Sachin Shirke, for Applicant in BA 2905 of 2023.

Mr. Tanveer Khan, APP for State.

API Suresh Bhoys, Anti Narcotic Cell, Crime Branch, Mumbai, present.

CORAM: N.J.JAMADAR, J.

DATE : 9 MAY 2024

P.C.

1. Heard the learned Counsel for the parties.

2. The applicants, who are arraigned in C.R.No.96 of 2021 registered with Anti Narcotic Cell, Bandra Unit, Mumbai, for the offences punishable under Sections 22(c), 25, 27(a) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, and Section 201 of the Indian Penal Code, have preferred these applications to enlarge them on bail.

3. On 13 November 2021, an information was received that a named lady

was to come between 7.15 a.m. to 7.45 a.m., near Lucky Hotel, Sakinaka to sell Mephedrone (MD). After complying with the statutory requirements, a surveillance was conducted. At about 7.30 a.m., Christina – applicant in BA No.651 of 2024, whose features matched the description given by the informant, reached the said spot in an autorikshaw. Christina was carrying a small purse. As her movements appeared suspicious, she was accosted. She was apprised of her right under Section 50 of the Act. As she declined to avail the right to be searched before the nearest Magistrate or Gazetted officer, a search was conducted in the presence of public witnesses. In the purse, which Christina was carrying, a small transparent plastic pouch with zip lock was found. The said pouch contained off white substance. It was MD. It weighed 50 gms. Contraband article was seized. Samples were collected. Upon interrogation, Christina disclosed that one Atul Walodara was her partner and she had procured the contraband from Rajkumar Rajhuns – applicant in BA No.2905 of 2023.

4. Pursuant to the aforesaid disclosure, on 14 November 2021, police party reached the farmhouse of the applicant Rajkumar at Dolgarwadi, Tal. Chandgad, Dist. Kolhapur. Nikhil Ramchandra Lohar (A2) was present at the farmhouse. It transpired that Nikhil (A2) was managing the affairs of the farmhouse. When the police party entered the farmhouse, two big drums with pungent smell were found. There was a shed with tin roof. In the said shed, a number of articles and utensils, apparatus, including round bottom flasks, which were used for manufacturing of

drugs, were found. As some of the equipments seemed to contain hazardous substance, the raiding party considered it appropriate to take assistance of forensic experts.

5. On 15 November 2021, the raiding party again visited the farmhouse and effected multiple seizure of various substances, equipments, apparatus and utensils, glass material and powder. Swabs were taken from various glass and other materials. The substance so collected was MD. It weighed 120 gms. Pursuant to an intimation, the applicant – Rajkumar came to be arrested from Malad, Mumbai on 17 November 2021. Subsequently, accused No.4 came to be arrested.

6. Thus, the gravamen of indictment against the accused is that Rajkumar (A3) and Nikhil (A2) were manufacturing MD at the farmhouse of the applicant Rajkumar (A3). Christina (A1) was procuring the contraband from the applicant. Investigation revealed that Christina had visited the said farmhouse and manufacturing unit along with Atul, an associate of Christina, who has been made a witness. The offences were committed in pursuance of a criminal conspiracy. There were financial transactions amongst the accused. They were in constant touch with each other.

7. Mr. Mundargi, learned Senior Advocate for the Applicant – Rajkumar, submitted that the alleged search and seizure of the equipments and utensils for manufacturing drugs and also the drugs at the farmhouse of the applicant Rajkumar, is

fraught with infirmities. The raiding party had visited the farmhouse on 14 November 2021. However, nothing was seized on that day. The Panchanama, on the contrary, records that the tin shed was locked and the key was handed over to Nikhil Lohar (A2). On the next day, the raiding party claimed to have again visited the farmhouse and seized the incriminating articles. Samples were also collected at the time of the alleged seizure on 15 November 2021.

8. Mr. Mundargi would thus urge that the prosecution case would stand or fall by the report of the analysis of the samples collected at the time of seizure. Since the samples were admittedly not drawn before the Magistrate, while conducting the proceedings under Section 52-A of the Act, the CA report would be bereft of any evidentiary value.

9. Mr. Mundargi would further urge that the said proceedings under Section 52-A of the Act, are otherwise also of no assistance to the prosecution. There was an inordinate delay in conducting the proceedings under Section 52-A of the Act. The alleged seizure was effected on 15 November 2023 and the proceedings before the Magistrate under Section 52-A of the Act, were conducted on 5 January 2023. Therefore, no sanctity can be attached to such inventory.

10. Mr. Mundargi would further urge that other evidence in the form of financial transactions between the applicants Christina and Rajkumar and the applicant Rajkumar and Nikhil Lohar, do not have incriminating tendency as the

applicant Rajmumar, being an Advocate by profession, was rendering professional services to Christina, and had appointed Nikhil Lohar as the caretaker of the farmhouse. The statements of witnesses Atul, an associate of Christina, and Arun Goral, who was allegedly working at a school run by Rajkumar, and his father, were stated to be got up by the prosecution to bolster up the prosecution case. The inherent inconsistencies in those statements erode the case of the prosecution, urged Mr. Mundargi. A criticism was advanced for not making Atul an accused, though Christina had allegedly stated that she and Atul were dealing in drugs procured from Rajkumar.

11. Mr. Bidkar, learned Counsel for the applicant – Christina, submitted that since only 50 gms of MD was allegedly found in possession of Christina, it cannot be said that Christina was found in possession of commercial quantity as under Section 2(viia) “commercial quantity” in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette. Since Christina was found in possession of the exact quantity notified as commercial quantity under the Notification, it cannot be said that she was found in possession of commercial quantity.

12. Mr. Bidkar would urge, there was only one women Police Naik in the raiding party. Christina, being a female, could not have been searched by anybody but

a female. And if search was conducted by women Police Naik, then the search was not by an empowered officer. An endeavour was made to draw home the point that there was no material to connect the applicant with the alleged manufacturing activity carried out by Rajkumar. Mr. Bidkar further submitted that the alleged inventory under Section 52-A of the Act, which was carried out after such a long delay, does not advance the cause of the prosecution. On the contrary, there is material to indicate that the bulk has already been destroyed (page 1798 of Christina's application). Therefore, it would be a case of absence of primary evidence. The financial transactions and the Whatsapp chats between Christina and Rajkumar were sought to be explained away by asserting that Christina had availed the services of the applicant Rajkumar in a Misc. Application pending before the City Civil Court and Sessions Court. Therefore, the said financial transactions, Whatsapp chats and CDR cannot form the basis to infer conspiracy, urged Mr. Bidkar.

13. As against this, Mr. Khan, learned APP, submitted that the seizure panchanama would indicate that the Applicant Rajkumar was involved in the manufacturing activity. Mr. Khan submitted that the material which was seized from the farmhouse of the applicant clearly demonstrates that drug manufacturing activity was underway. The presence of so many equipments and apparatus, along with the traces of drugs, cannot be explained on any other hypothesis. Once the prosecution succeeds in making out a prima facie case of drug manufacturing activity, the interdict

contained in Section 37 of the Act, will operate with full force and vigor. The accused who indulged in manufacturing of the contraband substance, do not deserve to be released on bail.

14. I find substance in the submissions of the learned APP. Sheer nature and volume of the equipments and apparatus, glass and other material, coupled with the traces of drugs, seized from the farmhouse of Rajkumar, prima facie, leads to no other inference than that of manufacturing of drugs from the said premises. At this stage, it appears to be rather difficult to draw any other hypothesis than that of the said premises having been used for manufacturing of the contraband substance.

15. Moreover, there is independent material in the form of the statements of Atul and Arun Goral recorded under Section 164 of the Code. Atul categorically stated that on 15 October 2021, he and Christina had visited the farmhouse of Rajkumar. Nikhil Lohar was also present thereat. The applicant Rajkumar had shown the plant set up for manufacturing of MD. On that day, thereafter, they had a dinner at the house of one Vaibhav A. Patil, resident of Dolgarwadi.

16. Arun Goral lends support to the claim of Atul. After adverting to the circumstances in which he was required to work for Rajkumar, Arun states about the manufacturing process which Rajkumar carried out at his laboratory in the farmhouse. He asserted that, in his presence, Rajkumar had manufactured white substance on 5-6 occasions. On 15 October 2021, Christina and Atul had visited the said farmhouse.

17. The material on record further indicates that during the period 16 September 2021 to 3 November 2021, the applicant Christina had transferred a sum of Rs.1,58,000/- to the account of the applicant – Rajkumar. An endeavour was made to urge that the said payment was made towards the fees for professional services rendered by Rajkumar.

18. Learned APP invited attention of the Court to the transcript of the Whatsapp conversation between the applicant Rajkumar, wherein the word ‘paper’ was used as a code word for contraband.

19. It is true, that would be a matter for evidence. However, at this stage, the proximity of the time to the seizure and recovery of the contraband from Christina as well as Rajkumar to the said payment, prima facie, lends credence to the prosecution version. The transcript of the Whatsapp chats also gives an indication that the conversation, prima facie, transgressed the professional communication which a legal practitioner enters into with his clients. To add to this, the statements of above named witnesses recorded under Section 164 of the Code, prima facie, establish the nexus between Christina and Rajkumar.

20. As there is a very strong prima facie case of Rajkumar having indulged in manufacturing of the contraband substance, the submissions on behalf of the applicants revolving around non-compliance and delayed compliance of the statutory provisions, pale in significance. Endeavour on the part of the accused to question

the search and seizure by pressing into service the alleged infirmities do not merit countenance at this stage. Those issues can be legitimately adjudicated at the stage of trial. The Court cannot loose sight of the fact that the manufacturing activity indulged in by Rajkumar would have caused huge proliferation of, and illicit trade in, the drugs.

22. I am conscious, in a series of judgments starting from the decision in the case of **Union of India V/s. Mohanlal and Anr.**¹, on which a strong reliance was placed by Mr. Mundargi, non-compliance of the provisions contained in Section 52-A of the Act, has been held to enure for the benefit of the accused. However, a case of the present nature stands on a different footing. It cannot be said that the complicity of the applicants would solely hinge on the proof of the seizure of a particular contraband from the possession of the applicants.

23. In this view of the matter, I am not inclined to accede to the submissions of Mr. Mundargi and Mr. Bidkar. This is not a case where the Court can exercise discretion in favour of the applicants as there is no substantial probable cause to believe that the applicants may not be guilty of the offences for which they have been arraigned.

24. Hence, the following order :

ORDER

(i) The Applications stand rejected.

1 (2016) 3 SCC 379

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

(N.J.JAMADAR, J.)