

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.840 OF 2024

Rajesh Damodar Bobhate ... Applicant
Vs.
State of Maharashtra ... Respondent

WITH
BAIL APPLICATION NO.2139 OF 2024

Anthony Alex Paul ... Applicant
Vs.
State of Maharashtra ... Respondent

Ms. Aruna Pai a/w. Mr. Ayaz Khan, Mr. N. M. Nadar and Ms. Mallika Sharma for Applicant in BA/2139/2024.

Mr. Shailesh Kharat a/w. Mr. Sangram Jadhav and Mr. Suyash Khose for Applicant in BA/840/2024.

Ms. Rutuja A. Ambekar, APP for Respondent-State in BA/2139/2024.

Mr. Sagar R. Agarkar, APP for Respondent-State in BA/840/2024.

Mr. Chaudhari, API, DCB / CID Unit-10.

CORAM : MANISH PITALE, J.
DATE : SEPTEMBER 24, 2024

P.C. :

1. Heard learned counsel for the applicants and learned APPs for the respondent-State.

2. The applicant - Rajesh Damodar Bobhate in Bail Application No.840 of 2024 was arrested on 25.04.2023 and the applicant - Anthony Alex Paul was arrested on 24.04.2023. Hence, the applicants have remained behind bars for a period of about one year and five months. They were arrested in connection with C.R.No.I-41 of 2023 of DCB CID Unit - 10 (earlier registered as FIR No.0330 of 2023 dated 24.04.2023 at Vakola Police Station, Mumbai). The investigation was

completed and the applicants are presently facing prosecution for offences under Sections 419, 420, 465, 468, 471, 385 and 201 read with Section 34 of the Indian Penal Code, 1860 (IPC), as also under Sections 23, 24, 8(c), 20(b)(ii)(A) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. The learned counsel for the applicants submit that in the present case, in terms of the order dated 07.11.2023 passed by the NDPS Special Judge, City Civil and Sessions Court, Greater Mumbai, on framing of charges, a specific finding is rendered that since the material on record corresponds to offences under the IPC and NDPS Act, which provide for punishment of imprisonment ranging from one year to seven years, the Chief Metropolitan Magistrate would try the offences against the applicants (accused).

4. It is submitted that the case of the investigating authority against the applicants is that they conspired and placed small quantity of *Ganja* (500 gms) in a trophy and handed it over to the daughter of the informant. They gave her an impression that she was required to visit Dubai for some audition and that, arrangements for her travel and stay were made by the applicants. This was allegedly done because the applicant Anthony Alex Paul was having a dispute with the informant and in order to teach him a lesson, the said applicant intended to falsely implicate the daughter of the informant in a case involving possession and transport of contraband material.

5. It is further alleged that the daughter of the informant, upon reaching Sharjah, found that she had been duped as the return tickets were allegedly fabricated and this gave rise to the registration of offences against the applicants.

6. The learned counsel for the applicants heavily rely upon the

aforesaid order dated 07.11.2023 passed by the NDPS Special Judge, which demonstrates that, at worst, the applicants would be facing trial proceedings before the Magistrate's Court and the applicants, having already undergone about one year and five months of incarceration, this Court may consider enlarging them on bail. In any case, the allegation pertains to small quantity of contraband, for which the punishment ranges between one year and two years. Reliance is also placed on a recent order passed by the Supreme Court on **27.08.2024** in **Criminal Appeal No.3525 of 2024** (*Abdumajid Abdulsattar Memon Vs. State of Gujarat*), wherein the Supreme Court took note of the fact that the case therein was triable by the Magistrate and the appellant therein had undergone incarceration for one year and three months. Considering the lack of progress of the trial, the Supreme Court found it fit to enlarge the appellant therein on bail. It is emphasized that in the present case, even the charge is yet to be framed.

7. On the other hand, learned APPs oppose the prayer made in the present application, emphasizing upon the *modus operandi* of the applicants. It is submitted that fabricated tickets were handed over to the daughter of the informant and contraband was exported at her hands without her knowledge, indicating that bail may not be granted when the applicants are facing prosecution for serious offences.

8. This Court has considered the material on record. The Court of NDPS Special Judge, in the order dated 07.11.2023, in paragraph 2, has briefly summarized the case of the investigating authority against the applicants. As noted hereinabove, it is claimed that due to the dispute with the informant, the applicant - Anthony Alex Paul conspired with the applicant - Rajesh Damodar Bobhate to plant *Ganja* in a trophy handed over to the daughter of the informant, who travelled to Dubai as she was given an impression that she was required to attend an audition in Dubai.

Eventually, daughter of the informant found that she had been duped and it is also alleged that the return tickets handed over to her were fabricated. The observations made in the said order of the NDPS Special Judge, City Civil and Sessions Court indicate that as on today, the applicants are facing prosecution for offences under Sections 419, 420, 465, 468, 471, 385, 201 read with Section 34 of the IPC. The said Court found that all the aforesaid offences are triable by the Magistrate. Upon analysis of the material on record, the said Court also found that only small quantity of *Ganja* was involved and considering the said material, it was found that the offences alleged against the applicants under the NDPS Act, all pertained to situations where punishment for imprisonment can be imposed for a period from one year to three years. In that light, the case was transferred for trial to the Chief Metropolitan Magistrate, Mumbai.

9. It is an admitted position that till date, even charge has not been framed. The applicants have already suffered incarceration for about one year and five months. It is to be noted that in similar circumstances, where the case was a Magistrate triable case, the Supreme Court in the aforesaid recent order passed in the case of **Abdalmajid Abdulsattar Memon Vs. State of Gujarat** (*supra*) granted bail to the accused under-trial, while he had undergone custody for only about one year and three months.

10. In the present case, charge-sheet is already filed. The applicants have suffered incarceration for about one year and five months. Even as per the material available on record, only small quantity of *Ganja* is involved. In such a situation, no purpose would be served by continuing the custody of the applicants, and therefore, a case is made out for enlarging the applicants on bail.

11. In view thereof, the application is allowed in the following terms:-

- (A) The applicants - Rajesh Damodar Bobhate and Anthony Alex Paul shall be released on bail in connection with C.R.No.I-41 of 2023 of DCB CID Unit - 10 (earlier registered as FIR No.0330 of 2023 dated 24.04.2023 at Vakola Police Station, Mumbai), on furnishing P.R. Bond of Rs.50,000/- each with one or two sureties in the like amount to the satisfaction of the trial Court;
- (B) The applicants shall report to the office of the DCB CID Unit No.10 on the first Monday of every month during the pendency of the trial;
- (C) The applicants shall cooperate with the trial Court for expeditious trial and they shall attend each and every date, unless exempted for reasons to be recorded in writing;
- (D) The applicants shall not tamper with the evidence of the prosecution. They shall not influence the informant, witnesses or any other person concerned with the case;
- (E) The applicants shall surrender their passports, if any, with the trial Court;
- (F) Upon being released on bail, the applicants shall immediately, and in any case within a week, furnish the details of their active mobile numbers and residential addresses to the trial Court and update about the same, if there is any change.

12. Needless to say, violation of any of the aforesaid conditions would make the applicants liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicants in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

13. The bail applications stand disposed of accordingly.

(MANISH PITALE, J.)

Minal Parab