

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

BAIL APPLICATION NO. 985 OF 2024

Kamlesh Sakhray Gupta	...	Applicant
Versus		
Union of India & Anr.	...	Respondents

Mr. Pranay P. Saraf a/w Dipendra Bose and Mr. Nilesh Bangar for the Applicant.

Mr. Madhukar P. Dalvi a/w Mr. Shivam S. Dube for Respondent No.1-UOI.

Mr. Tanveer Khan, APP for Respondent No.2-State.

**CORAM: MANISH PITALE, J.
DATE : 12th DECEMBER 2024**

P.C. :

. Heard learned counsel for the applicant and learned counsel appearing for the contesting respondent No.1-Union of India through Narcotics Control Bureau, Mumbai Zonal Unit.

2. The applicant was arrested on 15th June 2021 in connection with NDPS Special Case No. 1526 of 2021. It is alleged that secret information was received in respect of contraband being handled and on that basis, when the applicant was confronted, he was found in a room in a Gurudwara, from where cash amount of Rs.2,20,000/- was allegedly recovered. Thereafter, the applicant was allegedly taken to his premises and from there, contraband in the form of 2kgs of *charas* was recovered. The applicant has

remained incarcerated from the date of his arrest, thereby indicating that he has suffered incarceration for a period of 3 and ½ years.

3. The learned counsel for the applicant submits that apart from the long period of incarceration already undergone, not even a single witness has been examined, although charge was framed on 14th February 2024. Certain discrepancies can be pointed out from the material placed on record with the charge-sheet. In that regard, the learned counsel for the applicant refers to *panchanama* dated 14th June 2021 and the godown receipt of the same date, alleging that timelines recorded therein falsify the case of the prosecution. It is further submitted that although it was claimed that an amount of Rs.2,20,000/- in cash was recovered from the applicant, search and seizure report makes no reference to cash amount. It is to be noted that the applicant is facing prosecution along with co-accused persons in the present case for offences under Sections 20(C), 27, 28 and 29 of the NDPS Act.

4. The learned counsel appearing for the contesting respondent No.1, on the other hand, submitted that the aforesaid discrepancies are all matters for trial. It was submitted that the list of witnesses shows only 25 witnesses and therefore, if the trial is expedited, it can be completed within a reasonable period of time and that the applicant cannot claim any relief merely on the ground of the period of incarceration already suffered. It is submitted that the present case involves commercial quantity of

contraband (*charas*) and that this Court may not show any indulgence to the applicant.

5. The rival submissions were considered in the light of the material placed on record. It is found that conviction for offences under the NDPS Act, provides for drastic consequences and therefore, Courts have been insisting upon all the requirements under the statute being scrupulously followed, so that there is no possibility of any false implication of the accused persons. In this regard, the criminal record of the accused person also assumes significance. It is undisputed that the applicant has no criminal antecedents.

6. The material on record shows that *panchanama* dated 14th June 2021 was executed, which recorded as to the manner in which the aforesaid cash amount was allegedly recovered from the applicant from a room of a *Gurudwara* and thereafter, contraband in the form of 2 kgs of *charas* was allegedly recovered from the premises of the applicant. It is to be noted that the aforesaid *panchanama* itself record that it was completed at 20:40 hours on 14th June 2021 and during the process, the contraband was kept in a transparent polythene pouch, which was heat sealed and then put inside a carton box that was marked 'H'.

7. The godown receipt signed and executed by the Superintendent of Mumbai Zonal Unit of the NCB, specifically records that the aforesaid box marked 'H' allegedly containing

2kgs of *charas* was deposited in the godown on 14th June 2021 at 18:50 hours. The said godown receipt even refers to the NCB Seal No.03 being handed over for safe custody, which is the very seal recorded in the aforementioned *panchanama*.

8. There is substance in the contention raised on behalf of the applicant that when the *panchanama* was completed at 20:40 hours on 14th June 2021, the box containing the contraband bearing the mark 'H' could not have been deposited with the godown at 18:50 hours itself on the same date. There is substance in the contention raised on behalf of the applicant, which does give rise to a *prima facie* case in favour of the applicant. The purity of the process of seizure and storage of contraband in such cases, is of utmost significant and such a discrepancy would go to the root of the matter.

9. It is also noted that while the *panchanama* executed on 14th June 2021 refers to seizure of cash amount of Rs.2,20,000/- from the applicant, the search and seizure report dated 15th June 2021 submitted under Section 57 of the NDPS Act, does not mention seizure of such cash amount. It only refers to the aforesaid carton box marked 'H' allegedly containing 2kgs of *charas*. This is another aspect of discrepancy that can be taken into consideration.

10. The applicant claims to be a taxi driver, in support of which, he relies upon a copy of his driving license. It is undisputed that the applicant has no criminal antecedents.

11. Additionally, this Court finds that having been arrested on 15th June 2021, the applicant has already suffered incarceration for 3 and ½ years. The charge was framed on 14th February 2024, but not a single witness has been examined by the prosecution. The list of witnesses shows 25 witnesses, indicating that the trial is not likely to be over within a reasonable period of time. In similar circumstances, the Supreme Court in the case of *Rabi Prakash v/s. The State of Odisha* in Special Leave Petition (Crl.) No. 4169 of 2023, in the order dated 13th July 2023, held that in a similar situation, where the accused under-trial was facing prosecution under the provisions of NDPS Act, had suffered incarceration for more than 3 and ½ years and where 1 out of 19 witnesses had been examined, the accused under-trial deserved to be released on bail recognizing the right to speedy trial as a facet of right to life under Article 21 of the Constitution of India, even in the face of the stringent requirements under Section 37 of the NDPS Act.

12. This Court is inclined to apply the said position of law to the benefit of the applicant and hence, the application deserves to be allowed.

13. In view of the above, the application is allowed in the following terms:

- (i) The applicant shall be released on bail in connection with C.R. No. NCB/MZU/CR-57/2021 registered with the Narcotics Control Bureau, Mumbai

Zonal Unit, on furnishing P.R. Bond of ₹50,000/- and one or two sureties in the like amount to the satisfaction of the trial court.

(ii) The applicant shall report to the office of the Narcotics Control Bureau, Mumbai Zonal Unit, on first Monday of every month between 10:00 a.m. and 12:00 noon, during the pendency of the trial.

(iii) Upon release, within one week, the applicant shall inform the Investigating Officer as well as the trial court about his contact number and residential address and update the same in case of any change;

(iv) The applicant shall deposit his valid passport with the Investigating Officer within one week of release on bail. It shall remain so deposited during the pendency of the trial.

(v) The applicant shall not tamper with the evidence in any manner. He shall not influence the informant, witnesses or any other persons concerned with the case.

(vi) The applicant shall attend the proceedings before the Trial Court on every date, except when exempted, for reasons to be recorded in writing.

14. Needless to say, violation of any of the aforesaid conditions

may lead to cancellation of the present order.

15. It is also clarified that the observations made in this order are limited to the disposal of the present bail application and the Trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

16. The application stands disposed of.

17. At this stage, the learned counsel for the applicant prays for cash security till the surety is furnished.

18. The applicant is permitted to furnish cash security of ₹50,000/- for a period of four weeks.

MANISH PITALE, J.