

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1273 OF 2024

Zaqir Hussain Abdul Rehman Shaikh @

Bablu Patriwala

..Applicant

Versus

Union of India & Anr.

..Respondents

Mr. Atul Sarpande a/w Nilesh Bangar & Kamlesh Satre, for the Applicant.

Mr. Shriram Shirsat a/w Karishma Rajesh, for the Respondent No.1.

Mr. Kiran C. Shinde, APP for the Respondent No.2/State.

CORAM : MANISH PITALE, J.

DATE : 18th SEPTEMBER, 2024

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1. Heard learned counsel for the Applicant and learned counsel appearing for the Narcotics Control Bureau.

2. The Applicant was arrested on 05.02.2021 in connection with Special Case No.936 of 2021 in C. R. No.10 of 2021. He has remained incarcerated since the date of his arrest i.e. for a period about three years, seven months and fifteen days.

3. The Applicant is the only accused who is still incarcerated while the others are released on bail. In the present case, it is stated that information was received about contraband substance being in possession of the Applicant (accused No.1) at a

room at Kurla, Mumbai. On the basis of such information, the NCB through its officers proceeded to the said premises and in the presence of Panchas recorded Seizure Panchanma on 05.02.2021. In the said Panchanama the recovery of 200 bottles of Codeine Syrup was recorded. It was stated that there were four persons found in the said room, including the Applicant. One of the said persons is accused No.2, who is also released on bail by an order passed by the Sessions Court on 30.07.2022.

4. The Applicant is facing prosecution along four co-accused persons for offences under Sections 8(c) r/w 20(b)(ii)A, 21(c), 22(c), 25, 27, 27(A), 29, 30 and 35 of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

5. Learned counsel for the Applicant submits that other accused persons have been enlarged on bail. A specific reference is made to a recent order dated 09.07.2024 passed by the Supreme Court in Special Leave to Appeal (Crl.) No.2964 of 2024, whereby co-accused No.3 was granted bail, *inter-alia* on the ground that there are number of witnesses to be examined and since charge is yet to be framed, the trial is likely to take considerable time for completion. It is submitted that the aspect of charge not being framed and the trial not being completed within reasonable period of time, is an aspect that inures to the benefit of the Applicant also.

6. Apart from the aforesaid submissions, it is contended

that the Applicant has a good case on merits. In that context, reference is made to the Information Note dated 04.02.2021 to highlight the contradiction therein about the room number allegedly pertaining to the Applicant, where contraband was said to have been stored. It is submitted that the very same document refers to room No.104 as well as room No.41. The Panchanama records the premises as room No.104, where the contraband was allegedly found. It is submitted that the statement of one of the persons issued notice under Section 67 of the NDPS Act, Mohd. Rehan Munnawar Ali Shaikh records that the Applicant was residing at room No.46 and neither room No.104 nor room No.41 is mentioned in the aforesaid statement. It is submitted that this gives rise to serious doubt about the very premises from which the contraband is alleged to have been recovered.

7. It is further submitted that there is not an iota of material to link the Applicant with the actual premises from where the contraband was allegedly recovered. It is further submitted that in any case, the charge-sheet shows that there are at least 26 witnesses to be examined by the prosecution and the charge not having been framed yet, there is remote possibility of the trial being completed within reasonable period of time. The Applicant has already suffered incarceration for a period of three years, seven months and fifteen days, which ought to be taken into consideration, coupled with the fact that the Applicant has no criminal antecedents.

8. On the other hand, learned counsel appearing for the NCB has vehemently opposed the present Application. He submitted that the Applicant cannot claim parity, because his role is distinct from that of the others and in a sense he can be said to be the main accused person. It is further brought to the notice of this Court that correct facts were not pointed out to the Supreme Court when the aforementioned order dated 09.07.2024 was passed in favour of accused No.3. In the said order, the Supreme Court has recorded that co-accused No.2 was granted bail despite the fact that he was the person in possession of the contraband. This was never the case of the prosecution and it is a fact that according to the prosecution the Applicant i.e. accused No.1 was found in possession of the contraband. This factor, according to the learned counsel for the Respondent/NCB ought to be taken into consideration by this Court.

9. It is further submitted that the discrepancy in the room number mentioned at various places on the documents highlighted on behalf of the Applicant can be said to be a typographical error and in any case when the seizure Panchanama was executed in the presence of independent Panchas, the said aspect of the matter will have be thrashed out at the stage of trial. It is submitted that since draft charges have been already submitted, charge could be framed expeditiously and although 26 witnesses have been shown in the list of witnesses in the charge-sheet, in practical terms fewer witnesses are examined and the trial can be completed in the near future. On this basis, it is submitted that the Application may be dismissed.

10. This Court has considered rival submissions in the light of the documents on record. At the outset, it is correctly pointed out by the learned counsel for the Respondent/NCB that perhaps correct facts were not placed before the Supreme Court, as it was recorded by the Supreme Court in its order dated 09.07.2024, while granting bail to accused No.3 that accused No.2 was found in possession of the contraband. The record shows that the case of the prosecution is that the Applicant/accused No.1 was found in possession of the contraband. This is further confirmed from the contents of the order dated 30.07.2022 passed by the Sessions Court while granting bail to accused No.2. In paragraph 17 of the said order, the Sessions Court recorded that nothing was recovered from or at the instance of accused No.2. To that extent, the contention raised on behalf of the Respondent/NCB deserves to be accepted.

11. But, it is to be noted that the Supreme Court granted bail to accused No.3, not only on the said aspect of the matter, but it was recorded that the accused No.3 was supplier and it was emphasized that charge was yet to be framed that the trial would take time to be completed. This factor of the charge having not been framed and the trial taking time to be completed would equally apply to the case of all the accused persons, including the Applicant herein.

12. Before referring to the said aspect of the matter, since learned counsel for the Applicant and the learned counsel appearing

for the Respondent/NCB also addressed this Court on merits, it would be appropriate to refer to the rival submissions. Learned counsel for the Applicant has highlighted the discrepancy in the details of the room number i.e. the premises from which the contraband was recovered, recorded at different places in different manner.

13. The basic document i.e. the Information Note dated 04.02.2021 itself shows that at one place, it is recorded that the place, where the narcotics drugs and psychotropic substance was kept, as per the information, was room No.104, Railway Burma Shell, Kurla (E), Mumbai, while in the same document under the heading information recorded, the details of the room were recorded as room No.41. The seizure Panchanama records, the place of recovery of the contraband as room No.104, while in the voluntary statement of Mohd. Rehan Munnawar Ali Shaikh recorded under Section 67 of the NDPS Act, being a person allegedly present in the said premises/room, the room number was recorded as Room No.46, Railway Burma Shell, Kurla (E), Mumbai. It is asserted in the aforesaid statement that the Applicant had shifted to the said room. There is indeed discrepancy in the details of the room as per the Information Note, Seizure Panchanama and the said voluntary statement.

14. Although the seizure Panchanama is recorded in the presence of the Panch witnesses, if the basic document describing

the premises as per the information received consists of discrepancy, it does create an iota of doubt with regard to the very steps undertaken by Respondent/NCB, from the very inception. There can be no doubt about the fact that this could also be a matter for trial, but while considering the bail application, the said discrepancy highlighted on behalf of the Applicant cannot be ignored. This is particularly in the light of a specific contention raised on behalf of the Applicant that in the entire charge-sheet there is nothing indicate or link the Applicant with the room in question, where the contraband is said to have been recovered.

15. As per the seizure Panchanama, the room from where the contraband was recovered is room No.104, while the Information Note refers additionally to room No.41 and the voluntary statement referred to herein-above records room No.46. This is an aspect that does inure to the benefit of the Applicant to demonstrate *prima-facie* case about the authenticity of the information received and the genuineness of the claims made by the prosecution. This has to be viewed in the backdrop of the fact that the Applicant does not have any criminal antecedents and amongst the four persons said to have been present in the room/premises at the time when the contraband was allegedly recovered, only the Applicant has been singled out on the basis that the information that was received in his context.

16. As regards the aspect of period of incarceration

undergone by the Applicant, it cannot be disputed that he has suffered incarceration for a period of three years, seven months and fifteen days. The Supreme Court has taken note of the time that would be taken for completion of trial. The list of witnesses indicates 26 witnesses to be examined. Even if fewer witnesses would be examined at the stage of trial, the charge not having been framed as yet is a crucial factor that cannot be ignored. The Supreme Court also emphasized upon the said aspect of the matter while granting bail to accused No.3.

17. The Supreme Court has repeatedly asserted the power to be exercised by Constitutional Courts in such situations, where the accused under trial has undergone incarceration for certain period of time and there does not appear to be any possibility of the trial being completed within a reasonable period of time. In fact, the Supreme Court has indicated that direction for expeditiously disposing of the trial proceedings cannot be the basis for ignoring the period of incarceration undergone and the present status of the proceedings before the Trial Court.

18. In the present case, the charge is yet to be framed and even though learned counsel appearing for the Respondent/NCB indicates that all steps can be taken for expediting the trial proceedings, this Court cannot ignore the workload on the Special NDPS Courts in Mumbai. In a number of cases, directions for expeditious disposal of trial are issued, only to find that there is

hardly any progress before the Special Court and requests for extension of time period for completing such trials are received frequently and more often than not such extensions are granted.

19. In view of the above, this Court is of the opinion that the present Application deserves to be allowed.

20. Accordingly, the Application is allowed in the following terms :-

- (a) The Applicant shall be released on bail in connection with Special Case No.936 of 2021 in C. R. No.10 of 2021 on furnishing PR bond of Rs.50,000/- with one or two sureties in the like amount;
- (b) The Applicant shall attend the office of NCB Mumbai Zonal Unit, Mumbai on first Monday of every month between 10:00 a.m. to 12:00 noon;
- (c) The Applicant shall deposit his Passport, if any, before the concerned Court within one week of his released on bail;
- (d) The Applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant, witnesses or any other person concerned with the case;
- (e) The Applicant shall co-operate with the proceedings before the Trial Court and he shall attend each and every date, unless specifically exempted by the Trial Court;

- (f) Upon being released on bail, within two weeks, the Applicant shall communicate the details of his contact number and residential address to the Trial Court.

21. Needless to say, violation of any of the aforesaid conditions would make the Applicant 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 Applicant in the present Application and that the Trial Court shall proceed further, without being influenced by the observations made in this order.

22. The Application stands disposed of.

(MANISH PITALE, J.)