

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2268 OF 2024**

Babulal Hawaldar Yadav ... Applicant

vs.

The State of Maharashtra ... Respondent

Mr. Sandeep Kumar Singh for applicant.

Mr. Tanveer G. Khan, APP for respondent-State.

Mr. Santosh Sarjerao Ghade, PSI, Anti-Narcotics Cell, Mira-Bhayandar
Vasai-Virar.

CORAM : MANISH PITALE, J.

DATE : 17th DECEMBER, 2024

P.C. :

. Heard learned counsel for the applicant and the learned APP
for the respondent-State.

2. The applicant was arrested on 27.02.2024 in connection with
FIR No.0098 of 2024 dated 25.02.2024, registered at Naigaon Police
Station, Mira-Bhayandar, Vasai-Virar, for offences under Sections
8(c), 20(b), 20(b)(ii) and 29 of the Narcotic Drugs and Psychotropic
Substances Act, 1985 (NDPS Act).

3. It is alleged that on chance recovery, four co-accused persons
were found in possession of the contraband i.e. *charas* to the extent
of 5.5 kgs. They were specifically named in the FIR. During the
course of investigation, the role of the applicant came to the fore and
therefore, he was arrested on 27.02.2024.

4. The learned counsel for the applicant submits that there is no
recovery of contraband from the applicant. There is also nothing in
the charge-sheet to link the applicant with the recovery of
contraband. Merely because the applicant was said to have been in
touch with two of the co-accused persons, cannot be a ground to
claim that there is a case made out against the applicant. It is further

brought to the notice of this Court that the applicant is HIV positive, he is suffering from tuberculosis for which he is taking treatment and that he is also suffering from diabetes. It is submitted that in such circumstances, this Court may consider enlarging the applicant on bail, as he has already suffered incarceration for a period of about 10 months.

5. On the other hand, the learned APP vehemently opposed the present application. He submitted that the role of the applicant came to light, during the course of investigation. Section 29 of the NDPS Act has been invoked and therefore, the applicant cannot claim relief, merely because there was no recovery of contraband from him. Reliance is placed on the bank account statements, to indicate that there were transactions between the co-accused Amit and the applicant. Reliance is also placed on call details records (CDRs), to claim that the applicant was in touch with the co-accused persons.

6. This Court has perused the material on record and considered the rival submissions. It is an admitted position that the applicant was not present at the place, where the four co-accused persons were found and the contraband was recovered from them. There is no recovery of contraband from the applicant. In this backdrop, it is necessary to examine as to what material is brought on record alongwith the charge-sheet, to link the applicant with the recovery of the aforesaid contraband.

7. A perusal of the bank account statements shows that on two occasions i.e. on 25.01.2024 and 09.02.2024, the applicant had transferred ₹ 10,000/- each to the co-accused Amit. It is to be noted that the said co-accused alongwith other three accused persons, was found in possession of contraband on 24.02.2024. The aforesaid bank account entries *prima facie* do not appear to be showing any

link with the actual supply or exchange of contraband between the applicant and the co-accused persons. The dates of these bank account entries do assume significance in this context.

8. The other material relied upon by the prosecution is CDRs. Such entries would, at the most, show that the applicant was in touch with two co-accused persons. But, the proof of such CDRs would be a matter for trial and it would also have to be proved that such contact between the applicant and the co-accused persons, was related to the contraband that was recovered on the date and time of the incident. Therefore, this Court is of the opinion that the applicant has made out a *prima facie* case to claim that there is lack of material to link the applicant with the co-accused persons, particularly in the context of the recovery of contraband.

9. Apart from this, the documents on record show that the applicant suffers from AIDS as he is found to be HIV positive. He was under treatment for tuberculosis in the year 2021, and also for pulmonary tuberculosis in the year 2022 and he is on medication for diabetes. The medical condition of the applicant also justifies his prayer for being enlarged on bail. It is to be noted that the applicant has no criminal antecedents.

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

- (i) The applicant shall be released on bail in connection with FIR No.0098 of 2024 dated 25.02.2024, registered at Naigaon Police Station, Mira-Bhayandar, Vasai-Virar, on furnishing PR Bond of ₹ 50,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.
- (ii) The applicant, upon being released on bail, shall report to Anti-Narcotics Cell, Mira-Bhayandar Vasai-Virar, on the first Monday

of every month between 10:00 a.m. and 12:00 noon during the pendency of 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 co-operate with the trial Court in completing the proceedings expeditiously and attend the proceedings before the trial Court on each and every date, unless specifically exempted, for the reasons to be recorded in writing.
- (v) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not undertake any action that may influence the informant, witnesses and other persons concerned with the case.

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

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

13. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions are violated.

14. 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.

15. The application is disposed of.

(MANISH PITALE, J)