

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 727 OF 2024

Ali Asgar Pervez Siraji ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

BAIL APPLICATION NO. 2282 OF 2024

Vikaskumar Salekhchad Gupta ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

BAIL APPLICATION NO. 2306 OF 2024

Kamal Nitinkumar Rajput ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

BAIL APPLICATION NO. 3075 OF 2024

Nitesh Sanjay Yadav ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

BAIL APPLICATION NO. 3103 OF 2024

Babashaeb Bajirao Kakade ...Applicant

Versus

The State of Maharashtra ...Respondent

- Mr. Aabad Ponda, Senior counsel a/w Mr. Ajay Bhise and Ms. Deepali

Kedar, for Applicant in BA/727/2024.

- Mr. Ashok Mundargi, Senior Counsel a/w Mr. Ayaz Khan, Mr. Dilip Mishra and Ms. Zehra Charania, for Applicant in BA/2306/2024.
- Ms. Munira Palanpurwala a/w Ms. Sumaiya Khan, Ms. Deepa Amati and Ms. Kainat Sayed, for Applicant in BA/3075/2024.
- Mr. Shriganesh S. Sawalkar, for Applicant in BA/3103/2024.
- Ms. Suvidha Patil i/b Patil Associates, for applicant in BA/2282/2024.
- Mr. Sagar R. Agarkar, APP for Respondent.

CORAM: MANISH PITALE, J.

DATE : 19th DECEMBER, 2024.

P. C. :

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

2. The applicants herein were arrested on different dates in connection with First Information Report No.20 of 2023 registered at DCB-CID, Mumbai (initially registered as FIR No.0048 of 2023 registered at Police Station Jogeshwari, Mumbai), for offences under Sections 8(c), 18(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. It is claimed by the prosecution that in the present case information was received on 15th March, 2023 that some of the accused persons specifically named in such information were indulging in conspiracy of dealing with contraband and that they were trading in the same with the syndicate being run by absconding accused Kailash Rajput, residing abroad. On the basis of such information, accused No.1 – Vijay Rane and accused

No.2 Asim Shaikh, were allegedly found to be in possession of commercial quantity of contraband i.e. *Ketamine*. Upon the investigating authority undertaking further investigation, eventually 9 persons have been arraigned as accused and there are number of absconding accused persons in the present case.

4. The applicants before this Court are accused No.3 – Nitesh Yadav, accused No.4 – Vikaskumar Gupta, accused No.6 – Babashaeb Kakade, accused No.8 – Ali Asgar Siraji and accused No.9 – Kamal Rajput.

5. A perusal of the charge-sheet shows that although there is no allegation levelled against the applicants before this Court in these applications of having been found in possession of the said contraband, it is alleged that they are all part of the syndicate indulging in trade of such contraband, including sending contraband abroad through courier services. According to the prosecution, there is sufficient oral and documentary evidence on record to show the association of the applicants with such courier services and having conspired with absconding accused persons to deal with the aforesaid contraband and sending it abroad to various destinations in Europe and Australia, as also other destinations through courier services. It is also alleged that the *modus operandi* adopted by the accused persons, including the applicants was that packets of consumer products were emptied and the said

contraband was filled in such packets, which were then sealed. Thereafter, they were put in courier boxes to be sent abroad through courier services with which the applicants are said to be associated. It is in this backdrop that the contentions raised on behalf of the applicants were taken up for consideration.

6. As regards accused No.9 – Kamal Rajput i.e. applicant in Criminal Bail Application No.2306 of 2024, the learned senior counsel appearing for the said applicant submitted that the applicant was arrested on 25th September, 2023 i.e. more than 6 months after the offence was registered. No contraband was recovered from him and that he has been arraigned as an accused and arrested only on the statements of co-accused persons i.e. accused No.1 – Vijay Rane and accused No.2 Asim Shaikh. It is submitted that the statements of the aforesaid two accused persons recorded in the form of memoranda under Section 27 of the Evidence Act, pertain to March, 2023, while the applicant was arrested on September, 2023 and thereafter employees of the courier company with which the said applicant is said to be associated gave their statements after the arrest of the said applicant. It was submitted that such material clearly fall short of demonstrating any link of the applicant with the contraband recovered in the present case. It was submitted that the applicant has no criminal antecedents and therefore, this Court may consider enlarging him on bail.

7. In response, the learned APP relied upon the aforesaid statements of the co-accused persons and he also relied upon statements of certain witnesses, who are said to be employees of the courier company with whom the said applicant was associated. It was highlighted that the applicant is the brother of the alleged kingpin i.e. absconding accused – Kailash Rajput.

8. Having considered the rival submissions in respect of the said application, this Court finds that there is substance in the contentions raised on behalf of the said applicant. Although the statements of co-accused Nos.1 and 2 appear to indicate the involvement and role of the applicant as regards the general allegation pertaining to *modus operandi* adopted by the accused persons in dealing with the contraband substance and sending it abroad through courier services, the aforesaid statements themselves cannot be considered as incriminating material against the said applicant. Such statements in the form of memoranda recorded under Section 27 of the Evidence Act, of co-accused persons cannot constitute incriminating material against the applicant.

9. The other statements of the employees of the said courier company were recorded in October, 2023, after the applicant was already arrested. Even if the said statements are to be taken into account, at worst, the alleged *modus operandi* of dealing with contraband and sending it abroad

through courier services can be said to have been described. But, there is nothing to indicate that the said statements show the actual procedure or process adopted by the said applicant in connivance with the co-accused persons, including the absconding accused to deal with the contraband, which was actually found in possession of accused Nos.1 and 2. The general allegation pertaining to the aforesaid *modus operandi* with regard to the alleged past activities of the accused persons in general cannot lead to an assertion that the applicant can be *prima facie* said to be involved in the offence in the present case. The applicant has no criminal antecedents and in this backdrop, this Court is inclined to allow the said application.

10. As regards applicant/accused No.8 – Ali Asgar Siraji i.e. applicant in Criminal Bail Application No.727 of 2024, the learned senior counsel appearing for the said applicant pointed out that the applicant was arrested on 22nd May, 2023. There was no recovery of contraband from the said applicant and there is no material in the form of any financial transactions with the accused persons found in possession of the contraband, to link the applicant with the incident in question. Upon referring to the reply affidavit of the respondent – State, the learned senior counsel appearing for the applicant invited attention of this Court to statements of a number of witnesses, who have been specifically named in the reply affidavit, as having divulged the material involving the applicant in the present case. It was submitted that a

perusal of the said statements would show that none of them even refer to the courier company with which the applicant is alleged to be associated i.e. International Express Couriers. It is further pointed out that although the reply affidavit claimed that there are criminal antecedents, in both the cases the applicant has been discharged.

11. The learned APP, on the other hand, apart from referring to the statements of the witnesses that were referred to in the reply affidavit, invited attention of this Court to the statements of the witnesses, who claimed that they had been told about the *modus operandi* adopted by the said applicant through his courier services to send the said contraband abroad in connivance with the co-accused persons.

12. It was submitted that such material does indicate the manner in which the applicant could be said to be associated with the nefarious activities and hence, indulgence may not be shown to the applicant.

13. This Court has carefully perused the statements of the witnesses, whose names have been mentioned in the reply affidavit. None of the statements refer to the courier company i.e. International Express Couriers, with which the applicant is said to be associated. They have referred to other courier companies, including companies with whom the absconding accused are said to be associated. The statements of the witnesses from the charge-

sheet that were read out by the learned APP today before this Court also partly indicate only hearsay evidence and in any case such material refers to the alleged acts on the part of the said applicant in helping pack contraband material in boxes and arranging for the same to be sent by courier to various destinations abroad. The said material falls short of indicating the involvement of the applicant with the actual contraband material that was recovered from accused Nos.1 and 2 on 15th March, 2023. It does not even refer to specific contraband being transported through courier and as to whether the same was recovered in any manner. Therefore, there is no question of any contraband having been sent for chemical analysis, the results of which were positive and with which the said applicant could be associated. Hence, the applicant has made out a *prima facie* case in his favour and the application deserves to be allowed.

14. As regards applicant/accused No.3 – Nitesh Yadav i.e. applicant in Criminal Bail Application No.3075 of 2024, it is brought to the notice of this Court that he was arrested on 20th March, 2023. Even according to the prosecution, he was working as data entry operator in the courier company i.e. Young Knight Express Courier with which absconding accused – Danish Mulla is associated. The material on record merely indicates that this person was an employee, who was feeding data on the computers, during the course of investigation, may have assisted the Investigating Authority in extracting

such data. But, in the absence of any other material to show an overt act on the part of the applicant, as being part of some syndicate involved in large scale dealings with contraband and sending it abroad to various destinations and particularly in the absence of any material to link the said applicant with the contraband that was actually seized from accused Nos.1 and 2, this Court finds that a strong *prima facie* case can be said to be made out by the said applicant for being enlarged on bail. The said applicant also does not have any criminal antecedents and his application deserves to be granted,

15. As regards applicant/accused No.4 – Vikaskumar Gupta, applicant in Criminal Bail Application No.2282 of 2024, it is brought to the notice of this Court that he was arrested on 20th March, 2023. This Court has heard the learned counsel for the applicant as well as the learned APP and it appears that the only material against the applicant is his own memorandum statement recorded under Section 27 of the Evidence Act. Obviously, such a statement cannot be claimed to be clinching material against the said applicant for showing his involvement with the acts that led to registration of the aforesaid offence. He has no criminal antecedents. In any case, the material falls short of linking the applicant with the recovery of contraband from accused Nos.1 and 2. Therefore, the said application also deserves to be allowed.

16. As regards applicant/accused No.6 – Babashaeb Kakade, applicant in Criminal Bail Application No.3103 of 2024, it is pointed out that he was arrested on 20th March, 2023. The learned counsel for the applicant submitted that the applicant has no criminal antecedents and he was merely an employee with the custom clearance and he has been unnecessarily roped in by the Investigating Authority. There is a reference to an amount of ₹ 30,000/- received from co-accused No.5, but it is submitted that the same cannot be demonstrated to be concerned with the recovery of the contraband in the present case.

17. The learned APP, on the other hand, referred to the statements of witnesses, including employees at the custom clearance, who stated that the practice of sending such contraband through courier boxes was brought to the notice of the applicant but, he stated that this practice had continued for a long time and therefore, it ought to be ignored.

18. This Court is of the opinion that such statements are again general in nature and they pertain to the alleged activities of the syndicate over a period of time in dealing with contraband and sending it abroad to various destinations through courier services. The said statements of witnesses in no manner link the said applicant with the recovery of the contraband from accused Nos.1 and 2 on 15th March, 2023, which led to registration of the

offences. Therefore, there is lack of material to link the said applicant with the offence with which the prosecution is proceeding against the said applicant. Therefore, the aforesaid application also deserves to be granted.

19. This Court is of the opinion that despite voluminous charge-sheet being filed alongwith numerous documents and statements of witnesses, the Investigating Authority in the present case has not been able to show a *prima facie* link of the applicants with the actual recovery of contraband on 15th March, 2023, from accused Nos.1 and 2. There is substance in the contention raised on behalf of the applicants that general and omnibus allegations and alleged supporting material showing that the applicants were part of a syndicate sending contraband substance abroad through couriers does not show actual recovery of contraband from them or any material to indicate that further courier boxes were recovered with contraband, which was sent for chemical analysis. Therefore, on such general and omnibus allegations, the applicants cannot be further retained in custody. They have all made out a strong *prima facie* case in their favour and therefore, the applications are allowed. The twin test contemplated in Section 37 of the NDPS Act is satisfied.

20. In view of the above, the applications are allowed in the following terms:

- (A) The applicants (1) Ali Asgar Pervez Siraji, (2) Vikaskumar Salekhchad Gupta, (3) Kamal Nitinkumar Rajput, (4) Nitesh Sanjay Yadav and (5) Babashaeb Bajirao Kakade, shall be released on bail in connection with FIR No.20 of 2023 registered at D.C.B., C.I.D., Mumbai (initially registered as FIR No.0048 of 2023 registered at Police Station Jogeshwari, Mumbai) on furnishing PR bonds of ₹50,000/- each with one or two sureties each in the like amount, to the satisfaction of the Trial Court.
- (B) The applicants shall report to the office of D.C.B., C.I.D., Anti Extortion Cell, Mumbai, on the First Monday of every month between 10.00 a.m. to 12.00 noon, during the pendency of the trial.
- (C) The applicants shall attend the proceedings before the Trial Court on every date, except when exempted, for reasons to be recorded in writing.
- (D) The applicants shall surrender their passport, if any, before the Trial Court within one week of being released on bail.
- (E) The applicants shall not tamper with the evidence in any manner. They shall not influence the informant, witnesses or any other persons concerned with the case.

(F) The applicants shall upon being released immediately inform the Investigating Officer of their Contact numbers and residential addresses and update the same in case of any change.

21. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicants shall be liable to be cancelled.

22. It is made clear that the observations made in this order are limited to the question of grant of bail to the applicants and that the Trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

23. The applications are disposed of.

(MANISH PITALE, J.)