

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3137 OF 2024

Omkar Ramesh Patil, Age 27 years,
Occ.Student, R/o.S.No.108/3/1B,
Patil Sai Villa, Near Akshara International
School, Pune.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Abad Ponda, Senior Advocate, with Mr.Abhijeet A.Desai,
Mr.Radhikesh V.Uttarwar, Mr.Shrikant D.Patil, Mr.Arjun Sanjay Pawar,
Ms.Pooja R.Thakur i/by Desai Legal for Applicant.
Mr.PH.Gaikwad, APP, for State.

CORAM : ANIL S.KILOR, J.

DATE : 4th October 2024

PC :

1. Heard.
2. By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No.119 of 2023 registered with Kothrud Police Station, Pune, for the offences punishable under Sections 8(c), 22(c), 29 of Narcotic Drugs and Psychotropic Substances Act of the Indian Penal Code.
3. In the present matter it is alleged that one paper strip having 426 squares therein containing LSD in it weighing about 7 grams 90 milligrams was recovered from the flat of Applicant. Similarly from the dicky of Activa Scooter alleged to have parked near the house of the Applicant, one paper strip having 1,254 squars therein containing LSD in it weighing about 22 grams 730 milligrams was recovered.

4. There are these two recoveries allegedly made from the Applicant i.e. the first recovery when the team of the Investigating Officer visited the home of accused on 24th May 2023 at 7.30 p.m and the second recovery allegedly made from a scooter parked on an empty ground near the house of accused at approximately 10.35 p.m on 25th May 2023.

5. It is the case of Applicant that Applicant was taken to the office of Anti Narcotic Cell (‘ANC’ for short) of Pune Police located within the premises of Pune Police Commissionerate at approximately 3.00 p.m on 24th May 2023 and brought to his residence at 7.30 p.m when the first recovery was shown. In the Panchanama it is stated that on 24th May 2023 at 7.30 p.m the Applicant opened the door of the house when the Investigating Officer readeprecached to his house and on search made of his house the contraband was recovered.

6. As regards second recovery, it is the case of Applicant that as per ‘Nivedan Panchanama’ it is alleged that the Applicant gave voluntary confession to the Investigating Officer at 10.00 to 10.30 p.m at the office of ANC, Pune, whereas, the said recovery was made approximately at 10.35 p.m on 25th May 2023. It is stated that the distance between the office of ANC and the residence of the Applicant is about 20 kilometers and therefore it is impossible to complete ‘Nivedan Panchanama’ by 10.30 p.m and then to recover the contraband from the scooter parked near the residence of Applicant in the open ground within five minutes i.e. approximately at 10.35 p.m. Thus, it is the case of the Applicant that he has been falsely implicated in the alleged offence.

7. It is therefore submitted that to establish above referred submissions and contentions of the Applicant, an application for

providing CCTV footage was made before the Special NDPS Court on 5th January 2024. Then, as the Court came to the conclusion that CCTV footage was material and should be preserved, an order to that effect was passed on 6th March 2024.

8. Thereafter on filing of the bail application by the Applicant before the Special Court, the Investigating Officer submitted a report stating that CCTV footages were preserved only for eleven days.

9. Interestingly the documents filed on record by the Applicant show that prosecution from time to time changed its stand as regards providing CCTV footages.

10. However, before dealing with the same, at this juncture, it is pertinent to take note of the judgment of Hon'ble Supreme Court of India in the case of **Paramvir Singh Soni Vs. Baljit Singh**¹. The relevant paragraphs are reproduced hereinbelow, which read thus :

“17. CCTV systems that have to be installed must be equipped with night vision and must necessarily consist of audio as well as video footage. In areas in which there is either no electricity and/or internet, it shall be the duty of the States/Union Territories to provide the same as expeditiously as possible using any mode of providing electricity, including solar.wind power. The internet systems that are provided must also be systems which provide clear image resolutions and audio. Most important of all is the storage of CCTV camera footage which can be done in digital video recorders and/or network video recorders. CCTV cameras must then be installed with such recording systems so that the data that is stored thereon shall be preserved for a period of 18 months. If the recording equipment, available in the market today does not have the capacity to keep the recording for 18 months but for a lesser period of time, it shall be mandatory for all States, Union Territories and the Central Government to purchase one which

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allows storage for the maximum period possible and, in any case, not below 1 year. It is also made clear that this will be reviewed by all the States so as to purchase equipment which is able to store the data for 18 months as soon as it is commercially available in the market. The affidavit of compliance to be filed by all States and Union Territories and Central Government shall clearly indicate that the best equipment available as of date has been purchased.

18. Whenever there is information of force being used at police stations resulting in serious injury and/or custodial deaths, it is necessary that persons be free to complain for a redressal of the same. Such complaints may not only be made to the State Human Rights Commission, which is then to utilise its powers, more particularly under Sections 17 and 18 of the Protection of Human Rights Act, 1993, for redressal of such complaints, but also to Human Rights Courts, which must then be set up in each district of every State/Union Territory under Section 30 of the aforesaid Act. The Commission/Court can then immediately summon CCTV camera footage in relation to the incident for its safe keeping, which may then be made available to an investigating agency in order to further process the complaint made to it.

19. The Union of India is also to file an affidavit in which it will update this Court on the constitution and workings of the Central Oversight Body, giving full particulars thereof. In addition, the Union of India is also directed to install CCTV cameras and recording equipment in the offices of :

- (i) Central Bureau of Investigation (CBI)
- (ii) National Investigation Agency (NIA)
- (iii) Enforcement Directorate (ED)
- (iv) Narcotics Control Bureau (NCB)
- (v) Department of Revenue Intelligence (DRI)
- (vi) Serious Fraud Investigation Office (SFIO)

(vi) Any other agency which carries out interrogations and has the power of arrest.

As the most of these agencies carry out interrogation in their office(s), CCTVs shall be compulsorily installed in all offices where such interrogation and holding of accused takes place in the same manner as it would in a police station.

20. The COB shall perform the same function as the SLOC for the offices of investigative/enforcement agencies mentioned above both in Delhi and outside Delhi wherever they be located.”

11. The above referred directions were issued by the Hon’ble Supreme Court of India in furtherance of fundamental rights of each citizen of India guaranteed under Article 21 of Constitution of India and thereby it is held that CCTV cameras must be installed with recording systems so that the data that is stored thereon shall be preserved for a period of 18 months. It is further observed that if the recording equipment available in the market today does not have the capacity to keep the recording for 18 months but for a lesser period of time, it shall be mandatory for all States, Union Territories and the Central Government to purchase one which allows storage for the maximum period possible and in any case, not below one year.

12. This Court in Writ Petition No.692 of 2022 (Somnath Laxman Giri and another Vs. The State of Maharashtra and others) vide order dated 25th January 2022 directed the Chief Secretary, State of Maharashtra to submit a report to this Court setting out the data of functional as well as non-functional CCTVs at all the police stations in the State, and the length/duration for which the data recorded in CCTVs is stored, as also the steps taken to keep backup of the said data.

13. Thereupon, the compliance affidavit came to be filed on 14th

February 2022 stating therein that out of 1089 police stations in the State of Maharashtra, in 547 Police Stations the work of installation of CCTV Surveillance System is completed. In the remaining 542 police stations the work of installation of CCTV Surveillance System is in progress. It was also stated in the said affidavit that work would be completed by 30th April 2022.

14. It is pertinent to note here that in the additional affidavit filed in the said Writ Petition No.692 of 2022 on 20th February 2022, it was stated on oath that UPS has been provided at each police station with minimum power backup of 60 minutes at full load for uninterrupted CCTV Surveillance. The system is mandated to keep the recorded CCTV footage for a minimum 365 days through Network Video Recorder (NVR). It is further submitted that If any incident is to be inquired in to by any authority, the video footage for the same will be kept for longer duration i.e. more than a year through an external removable device i.e. DVD. Further paras 12 and 13 of the said affidavit are important, which are reproduced as under :

“12. It is pertinent to note that, as aforesaid, in our state the process for installation of the aforesaid system started much before the Hon'ble Supreme Court passed the order dated 2nd December, 2020, in the Special Leave Petition (Criminal) No.3543 of 2020. Therefore, the aforesaid system provides for preservation of recording for a period of only 365 days. However, with the aforesaid order of the Hon'ble Supreme Court requiring the preservation of the recordings for a period of 18 months i.e. 6 months more than what has already been provided for in the aforesaid contracts entered into by the State, the Maharashtra Police has initiated the process to scale up the storage capacity from 12 months to 18 months. The actual working of the cost estimates has been undertaken and it is anticipated that the

additional approximate expenditure will be of Rs.15 Crores.

13. I say that so far, 6172 cameras are installed in 547 Police Stations. However, as per reports from the units, at the time of preparation of this affidavit, 5762 cameras are functional, and 410 cameras are non-functional. The contractors have been instructed to rectify all the issues regarding non-functional cameras at the earliest and in any event to execute the remaining maintenance work within the next fifteen days so as to complete the remaining project on top priority by 30th April 2022.”

15. At this juncture it is further imperative to note that State of Maharashtra filed a compliance affidavit before the Hon'ble Supreme Court of India in the case of Paramvir Singh Soni (supra) wherein it was stated that the CCTV System in the Police Stations does not have audio recording facility. However, video recording facility with 365 days storage capacity is available.

16. Thus, it is evident that not only before this Court but before the Hon'ble Supreme Court the State of Maharashtra has consistently made categorical statement that CCTV cameras in Police Stations in the State of Maharashtra are having storage capacity for 365 days.

17. As I have observed that from time to time different stands were taken as regards storage capacity of CCTV cameras by prosecution, it is necessary to note that while replying to the applications dated 24th July 2023 and 1st September 2023 made under Right to Information, the information was denied on the ground of security reason. Whereas, before the Special Court on 6th May 2024, initially it was stated that the footage is not within the control of ANC, however, after the direction by the Special Court to preserve the CCTV footages, while giving compliance report on 15th

May 2024 it was stated that footage is not preserved for more than 11 days. At the same time while giving reply to RTI application dated 15th July 2024 it was stated that 30 cameras installed with the storage capacity of 6 to 7 days and while making statement before this Court in the present matter it was stated that 21 cameras were installed with storage capacity of 6 to 7 days.

18. From the above referred facts one thing is certain that either prosecution is hiding something from this Court in the present matter by taking different stand as regards CCTV footage as demanded by the Applicant or the affidavits filed before this Court and before Hon'ble Supreme Court of India are misleading and incorrect. In both the cases the conduct needs to be deprecated.

19. In the above referred backdrop if the case of the Applicant stated hereinabove to the effect that he was taken to the office of ANC, Pune on 24th May 2023 at 3.00 p.m and then it is pretended in the panchanama that police reached his house on 24th May 2023 at 7.30 p.m and when Applicant opened the door of the house they took search and allegedly recovered contraband. Similarly doubt creates about the second recovery for the reason that if the Nivedan Panchanama continued till 10.30 p.m on 25th May 2023, how ANC officials covered the distance of about 20 kms in five minutes to seize and recover the contraband from the two wheeler parked on an empty ground near the house of Applicant, on 25th May 2023 at 10.35 p.m.

20. Thus, there are reasons to say that false implication of the Applicant, as alleged by the Applicant, cannot be ruled out at this stage, despite the fact that huge quantity of contraband allegedly has been recovered from the Applicant.

21. In that view of the matter, since I have expressed that there is possibility of false implication of the Applicant in the alleged offence, I am of the opinion that this is a fit case for grant of bail. Hence, I pass following order :

ORDER

- (i) Bail Application is allowed and disposed off;
- (ii) It is directed that the applicant shall be released on bail in Crime No.119 of 2023 registered with Kothrud Police Station, Pune, for the offences punishable under Sections 8(c), 22(c), 29 of Narcotic Drugs and Psychotropic Substances Act, on furnishing P.R.Bond of Rupees Fifty Thousand with one solvent surety in the like amount;
- (iii) The Applicant shall attend Kothrud Police Station, Pune, on every 1st and 16th of every month between 10.00 a.m and 12.00 noon till conclusion of trial;
- (iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;
- (v) Liberty is granted to the State for cancellation of bail if the applicant breaches any condition or misuses the liberty or commits similar offence;
- (vi) The applicant shall attend the trial before the Trial Court regularly on every date unless exempted by the trial Court for any reason.

(ANIL S.KILOR, J.)

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