

Baliram Yadav s/o Bageshwar Yadav @ Balli versus Union of India and Anr.		Applicant Respondents
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Mr. Kiran Gogavale, for Applicant.
Mrs. Manisha Jagtap, Special PP for Respondent No.1.
Mr. H.J.Dedhia, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 25 OCTOBER 2024

P.C.

1. Mrs. Jagtap, learned Special PP for Respondent No.1 seeks leave to tender an affidavit in reply.
2. Leave granted.
3. Affidavit in reply is taken on record.
4. Heard the learned Counsel for the parties.
5. The applicant, who is arraigned in NDPS Special Case No.301 of 2021 arising out of NCB F.No.NCB/MZU/CR-20/2020 for the offences punishable under Sections 20(c), 27, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, has preferred this application to enlarge him on bail.
6. At the outset, learned Counsel for the applicant submits that the applicant is entitled to be enlarged on bail on the ground of parity, as this Court has already released Shravan Gupta (A2) on bail by an order dated 2

May 2024. No incriminating article was found in possession of the applicant. The applicant has been roped in on the basis of the statement of the co-accused Avinash Singh (A1), from whose possession contraband articles were allegedly recovered, and Shravan Gupta (A2). Apart from the statements of the accused recorded under Section 67 of the Act, 1985, there is no other material to connect the applicant with the alleged offences.

7. Mrs. Jagtap, learned Special PP for Respondent No.1 resisted the prayer for bail. It was submitted that the applicant was the principal conspirator in the conspiracy to trade in illicit drugs. The applicant had delivered Charas to Avinash Singh (A1) and made good his escape after noticing the police party. Therefore, it cannot be said that there is no material to show the complicity of the applicant.

8. While releasing co-accused Shravan Gupta (A2), this Court has considered the gravamen of indictment against the applicant and the co-accused, and, thereafter, observed, inter alia, as under :

“3. On 15th September 2020, specific information was received that on that day between 4 to 5 pm., a person named ‘Baliram Yadav’ alias Balli, was to come near the Sports Complex Bus Stand, Bhayander (East) to deliver 2 kg Charas to Avinash Singh alias Chhotu. Description of the features of Avinash Singh alias Chhotu was furnished. Pursuant to the information, after compliance with the provisions of the NDPS Act,

1985, a surveillance was conducted.

4. The co-accused - Avinash Singh alias Chootu came near the Sports Complex Bus Stand, Bhayander (East). After a while the person who was to deliver the contraband substance came thereat. The said person delivered the contraband substance to Avinash Singh alias Chhotu. However, taking undue advantage of the rush at the said spot, the said person fled away. Co-accused - Avinash was accosted. He was apprised of his right to be searched before the nearest Magistrate or Gazetted Officer. As accused no. 1 – Avinash declined to avail the said right, a search was conducted. In the bag which accused No. -1 - Avinash was carrying, 8 rectangular packets were found. The substance in the said packets appeared to be Charas. A portion was scraped out and tested. The result was positive for Charas.

5. Upon enquiry, Avinash - A1 informed that the contraband was delivered by Baliram Yadav alias Balli. After a while Baliram Yadav alias Balli called Avinash on his mobile phone and informed him that one of his associates would reach Khau Galli to collect the money for the contraband, which was delivered to Avinash. At about 5.25 pm., the applicant - Shravan Gupta came near the auto rickshaw in which Avinash was sitting, to collect the amount. The applicant was accosted.

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9. I am afraid to accede to these submissions on

behalf of the prosecution. Prima facie apart from the statements of the co-accused, there is no other material to connect the applicant either with the contraband article or the co-accused. It is necessary to note that Avinash did not name the applicant. The prosecution case is that Baliram Yadav alias Balli had sent the applicant to collect the amount from accused no. 1 - Avinash Singh. Even if the prosecution case is taken at par, a further question as to whether the applicant had known that the amount, he was to collect from Avinash – (A1), was the price of the contraband article allegedly procured by Avinash from Baliram Yadav alias Balli would warrant adjudication at the trial.

10. In the aforesaid view of the matter, I am inclined to hold that there is a substantial probable cause to believe that the applicant may not be guilty of the offences for which he has been arraigned. The applicant has no antecedents. Thus, the Court may justifiably draw an inference that the applicant may not indulge in identical offences, if released on bail. The applicant has been in custody since 16th September 2000. It is unlikely that the trial can be concluded within a reasonable period. I am, therefore, inclined to release the applicant on bail.”

9. The role attributed to the applicant is that of supplying Charas to Avinash Singh (A1). The prosecution alleges that taking undue advantage of the rush at the spot of raid, the applicant fled away. The identity of the

applicant as the person who had allegedly supplied the contraband substance primarily rests on the statement of Avinash Singh (A1). Indeed, there are statements of the applicant and the co-accused Avinash Singh (A1) and Shravan Gupta (A2) recorded under section 67 of the Act, 1985. However, in view of the pronouncement of the Supreme Court in the case of **Tofan Singh V/s. State of Tamil Nadu**¹ the statements recorded under Section 67 of the Act, cannot be used as a confession against the accused.

10. It is also pertinent to note that a statement of the co-accused is not a legal piece of evidence. Therefore, the fact that Avinash Singh (A1) and Shravan Gupta (A2) implicated the applicant does not advance the cause of the prosecution. The situation which thus obtains is that the applicant was, prima facie, not apprehended with the contraband substance. Whether the contraband substance was, in fact, supplied by the applicant to Avinash Singh (A1) and Shravan Gupta (A2) was sent by the applicant to collect cash from Avinash Singh (A1), would be a matter for adjudication at the trial.

11. In this view of the matter, a strong prima facie case is made out in favour of the applicant. In the absence of the material to demonstrate that the applicant was either the supplier or found in possession of the contraband substance, the Court may draw an inference that eventually the applicant may not be found guilty of the offences for which he has been arraigned. The

1 (2021) 4 SCC 1

Court is not informed that the applicant has antecedents. Therefore, the Court may also draw an inference that the applicant may not indulge in identical offences if released on bail.

12. In any event, the applicant has been in custody since 18 September 2020. Having regard to the large pendency of the cases, it is extremely unlikely that the trial can be concluded within a reasonable period. Such a long period of incarceration without a real prospect of expeditious conclusion of the trial, impinges upon the right to speedy justice, which is a facet of the fundamental right to life guaranteed under Article 21 of the Constitution of India. Thus, on the count of long period of incarceration also, the applicant deserves to be enlarged on bail.

13. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Baliram Yadav s/o Bageshwar Yadav @ Balli be released on bail in NDPS Special Case No.301 of 2021 arising out of NCB/MZU/CR-20/2020 registered with NCB Mumbai, on furnishing a PR bond in the sum of Rs.50,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence at the Office of NCB, Mumbai on first Monday of every month between 11 am to 1 pm for a period

of two years or till the conclusion of the trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.

(v) The applicant shall not indulge in the identical activity for which he has been arraigned in this case.

(vi) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vii) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N.J.JAMADAR, J.)