

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1428 OF 2024

Aamir Hussain Sayyed

.. Applicant

Versus

Union of India and Anr.

.. Respondents

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- Mr. Khushal Parmar a/w. Ms. Anjali More, Advocates for Applicant.
 - Ms. Ruju R. Thakkar, SPP for Respondent No.1.
 - Mr. Sukanta A. Karmakar, APP for Respondent No.2.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 19, 2025

P.C.:

1. Heard Mr. Parmar, learned Advocate for Applicant and Ms. Thakkar, learned SPP for Respondent No.1 and Mr. Karmakar, learned APP for Respondent No.2 at length.

2. Prosecution case is primarily based upon the fact that commercial quantity of alleged contraband has been recovered in the present case and rigors of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short '**NDPS Act**') will not apply to the Application for bail as Applicant before Court will have to convince Court about he not being guilty in the crime.

3. It is however seen from the record of the case *prima facie* that the above case of prosecution is to the contrary. Ms. Thakkar has vehemently opposed release on bail on the basis of co-accused

statement namely statement of Accused No.1 who was apprehended at the airport alongwith the alleged contraband and persuaded the Court to consider the complicity of present Applicant arraigned as Accused No.2 in the crime.

4. The case of prosecution is *prima facie* based upon the alleged bank statement, CDR record and statement of independent witnesses which are appended to the charge-sheet. *Prima facie*, statement of the co-accused is inadmissible in law at this stage for the purpose of relying upon the same at the stage of bail as it is a statement made in enquiry under Section 67 of the NDPS Act and under Section 25 of the Indian Evidence Act, 1872. The prosecution can undoubtedly prove the same in accordance with law at the time of trial.

5. In so far as issue of commercial quantity been intercepted and confiscated is concerned, in so far Applicant before Court is concerned admittedly there has been no conscious recovery of any alleged contraband from his conscious possession as case of prosecution rests with confiscation and seizure of the alleged contraband from Accused No.1 inside the airport when she arrived as per intelligence report.

6. At page No.72 of the seizure panchnama it is *prima facie* seen that Accused No.1 has not disclosed the name of Accused No.2 as been the supplier to whom the alleged contraband was required to be

supplied. The said seizure panchnama categorically records that after Accused No.1 stepped out of airport she met Accused No.2 and another person called Raiz Babboo and immediately thereafter the three of them were intercepted by the prosecution team and taken to the AIU Office for recording their statement. On the same day statement of Accused No.1 has been recorded which is appended at page No.81 of the Application. However an apparent dichotomy is clearly noticed when at the end of both statements the signatures and dates which are appearing refer to a date 3 days later i.e. on 17.02.2023. There is no reason for prosecution to have appended two different dates namely 14.02.2023 and 17.02.2023 on the seizure panchnama and statement of the co-accused No.1.

7. That apart when inventory panchnama and certificate issued by Magistrate is concerned, with respect to alleged contraband which has been confiscated is seen, the provisions of NDPS Act namely Section 52A (2) and (3) read with Rules 8 and 18 (1) and (2) of the Narcotic Drugs And Psychotropic Substances (Seizure, Storage, Sampling And Disposal) Rules, 2022 has been given a complete go-by.

8. Despite Narcotic Drugs And Psychotropic Substances (Seizure, Storage, Sampling And Disposal) Rules, 2022 been in place , the prosecution has not followed the said rules. The certificate issued by the Magistrate is in the form which the Magistrate has desired to

issue at the say of the Investigating Officer which is impermissible in law.

9. This Court in case of *Chandrabhan Janardhan Yadav Vs. State of Maharashtra*¹ has considered the applicability of the provisions of NDPS Act and the Rules and more specifically the reasons as to why the said provisions are required to be followed by the prosecution. The non-compliance of the aforesaid statutory provisions are required to be considered by the Court at the time of Bail Application. The aforesaid *prima facie* discrepancies having been observed and no conscious recovery of possession having been made from the Applicant namely Accused No.2, makes out strong *prima facie* case for bail.

10. Ms. Thakkar has persuaded the Court to allow her to take instructions from the Investigating Officer on the aforesaid issue raised and permit her to address the Court on the next date.

11. Stand over to **21st March, 2025**. To be placed under the caption '**First on Board**' and to be treated as '**Part-Heard**'.

H. H. SAWANT

[MILIND N. JADHAV, J.]

1 Bail Application No.2254 of 2024 and connected matters decided on 04.03.2025.