

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1428 OF 2024

Amir 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 a/w. Mr. Priyanshu Doshi for Respondent No.1.
- Mr. Sukanta A. Karmakar, APP for Respondent No.2.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 21, 2025

P.C.:

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

2. At the outset learned Advocate for Applicant would persuade the Court to permit him to amend the name of Applicant mentioned in the cause title as 'Amir Hussain Sayyed' instead of 'Aamir Hussain Sayyed'. Amendment is permitted to be carried out forthwith. Re-verification stands dispensed with.

3. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking Bail in connection with F.No.DRI/MZU/C/INT-23/2023 registered with Directorate of Revenue Intelligence, Mumbai Zonal Unit, Mumbai for offences punishable

under Sections 8(c) read with Sections 21(c) 23(c), 27A, 28, 29 and 30 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short '**NDPS Act**').

4. After hearing Mr. Parmar, learned Advocate for Applicant; Ms. Thakkar, learned SPP for Respondent No.1 and Mr. Karmakar, learned APP for Respondent No.2 on 19.03.2025, the following order was passed:-

"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 Maharashtra¹** 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**'."

5. The matter was part-heard and arguments have been concluded today. In response to the aforesaid Ms. Thakkar, learned

SPP for Prosecution would persuade me to consider the Affidavit-in-Reply dated 10.09.2024 filed by Deputy Director of DRI appended at page No.262 of the Applicant once again and considering that Applicant has been instrumental in similar *modus operandi* in the past for arranging the travel of carriers of the alleged contraband, reject the Application.

6. Ms. Thakkar, learned SPP would submit that appended to the said Affidavit-in-Reply are certain *whatsapp* transcripts which have been unearthed by the prosecution from the mobile phone of Applicant of he having paid certain amount to one 'Zeet Travels' and she would submit that amounts of Rs.30,000/-, Rs.49,000/- and Rs.89,000/- can be seen to have been transacted from page Nos.299 to 301 have been paid by Applicant for facilitating the stay and travel arrangements of the carriers namely Accused No.1 in the present case.

7. Ms. Thakkar, learned SPP would next submit that the fact that Applicant was in constant touch with Accused No.1 and his accomplice namely Accused No.3 is itself borne out from CDR and in view of the consideration of the same by the Supreme Court in the case of *Narcotics Control Bureau Vs. Mohit Aggarwal*¹, this Court should apply the same principle in the present case and reject the present Application. She has drawn my attention to paragraph No.16 of the

¹ Criminal Appeal Nos.1001-1002 of 2022 arising out of Petitions for Special Leave to Appeal (Crl.) No.6128-29 of 2021 decided on 19.07.2022

said decision on page No.311 of the Application. On reading the same, *prima facie*, it is seen that Supreme Court in the said decision has made passing remark that CDR details of mobile phones of all co-accused persons including the Respondents shows that they were in touch with each other.

8. The law with respect to the consideration of CDR at time of bail is well settled. The majority of decision of Supreme Court 3 Judge Bench in decision of *Tofan Singh Vs. State of Tamil Nadu*² and decision of Supreme Court in the case of *Phundreimayum Yas Khan Vs. State (NCT of Delhi)*³ held that officers under the NDPS Act should be construed as 'police officers' under Section 25 of the Indian Evidence Act to prevent coercion in recording confessions and that confessions made before such officers are inadmissible as evidence and that statement under Section 67 of NDPS Act are *per se* not admissible without corroboration.

9. Ms. Thakkar, learned SPP points out that dual signatures appearing in the Seizure Panchnama of Accused No.1 is because of a fresh summons issued to Accused No.1 on 17.02.2023 and in response to the said fresh summons, fresh statement having been recorded on that date and in view thereof she has appended her signature on the second time on the Seizure Panchnama itself which was previously

² (2021) 4 SCC 1.

³ 2023 SCC OnLine 135.

recorded on 14.02.2023.

10. Needless to state that prosecution shall be at liberty to prove its case and complicity of Applicant in the crime in accordance with law at the time of trial. That apart, reliance on CDR at the bail stage without the transcripts of the said CDR having been shown to the Court to ascertain the role of Applicant and complicity of Applicant cannot be considered by the Court at this stage. Hence, in view of the reasons given in my previous order dated 19.03.2025 which *prima facie* are noticed by the Court with respect to transgression of the procedure under the NDPS Act which for the sake of brevity of the same are not repeated herein, the present Application therefore deserves to be allowed and Applicant is released on bail subject to following conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.1,00,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs.1,00,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.1,00,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;

- (iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (vi) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

11. It is clarified that the observations made in this order are limited for the purpose of granting Bail only. They shall not be construed as observations on merit. The trial shall be adjudicated on the strength of evidence led by parties and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

12. Bail Application No.1428 of 2024 is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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