

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2053 OF 2024

Akil Ibrahim Momin

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Raviraj Paramane a/w. Mr. Rohit Shirsath, Advocates for Applicant.
 - Ms. Sarita M. Yadav, APP for Respondent – the State of Maharashtra.
 - Mr. Dipak Ghuge, PSI, Kalwa Police Station.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 21, 2025

P.C.:

- 1.** Heard Mr. Paramane, learned Advocate for Applicant and Ms. Yadav, learned APP for Respondent – the State of Maharashtra.
- 2.** This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') seeking Bail in connection with C.R. No.373 of 2023 registered with Kalwa Police Station, Thane for offence punishable under Sections 8(c), 20, 22, 23 and 25 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short '**the said Act**')
- 3.** The crime in the present case is a chance recovery wherein contraband i.e. ganja weighing 88 kilograms seized by the interception team of Kalwa Police Station, Thane on receiving information.
- 4.** The vehicle i.e. tempo in question was being driven from

Thane to Bhiwandi via Panvel where it was intercepted. At that time there were two persons in the tempo namely Akash @ Abhishekh Aakrur Mane and Ravikant Suryakant Kamble, a cleaner. The ownership of the tempo belongs to one Sunanda Sadashiv Bengade. Her son Dashrath has given his statement to the Police which is shown to me by prosecution. In that statement, Dashrath has stated that said tempo was given to Akash @ Abhishekh Aakrur Mane and Ravikant Suryakant Kamble on hire. It is also stated in the said statement that there was some kind of Agreement between the parties.

5. Applicant before me is arraigned as Accused No.2. His name is Akil Ibrahim Momin. Consignment in the tempo originated from Odisha and it were proceeding towards its destination in Maharashtra where it was intercepted. On interception the driver of the tempo ran away. Prosecution does not know who the driver was nor any investigation has been made till date. Ravikant Suryakant Kamble, the cleaner is arraigned as Accused No.1, present Applicant is arraigned as Accused No.2 and Sanjay @ Baba Jawaharlal Chandalani is arraigned as Accused No.3.

6. Prosecution has recorded a statement of a relative of Sanjay @ Baba Jawaharlal Chandalani namely Pratik Prakash Chandalani which is dated 08.08.2023 and appended at page No.139 of the Application. In that statement Mr. Pratik Prakash Chandalani has

stated that seven to eight years ago Sanjay @ Baba Jawaharlal Chanaglani had quarrelled with his parents who were living in Bhiwandi and thereafter he left his house and his whereabouts are not known. He has stated that two years ago, the said Sanjay @ Baba Jawaharlal Changalani had made a phone call to him and informed him that one of his friends called Akil will come and meet him and give him some money. Hence Pratik Prakash Changalani went to meet Akil near the Nijampura market and took the money from him. All that he has stated in the statement is that Akil was an old man of 58 to 60 years suffering from throat cancer and unable to speak because of his medical ailment. This is the only reference to the Applicant which the prosecution has exploited and on the basis of which Applicant has been arrested in the crime.

7. It is stated in the Remand note that said Akil is none other than Akil Ibrahim Momin and learned APP has drawn my attention to the charges which are framed and appended at page No.29 and would submit that Applicant is the same Akil Ibrahim Momin who is having four antecedents under the said Act out of which two are registered in Hyderabad and two are registered in Bhiwandi. Ms. Yadav would also submit that there are CDR records which will show that Accused No.2 i.e. Applicant before me was in touch with Accused No.3 who is the principal offender to whom the said contraband was sent from Odisha to Maharashtra.

8. Applicant before me is in incarceration since 26.07.2023. He is suffering from throat cancer even according to the statement of prosecution witnesses. There is medical certificate which has been placed before me by Mr. Paramane. Though the quantity of contraband is commercial rather more than commercial conditions of Section 37 would therefore apply.

9. *Prima facie*, it is seen that name of Applicant has been taken by a prosecution witness who is a friend of Accused No.3 and his statement is appended at page No.139 of the Application which is only statement indicting role of Applicant. There is nothing else placed on record to corroborate the said statement.

10. However same statement states that the person called Akil whose name and address is not known was the person with whom the said witness had met two years ago on instructions of Accused No.3 i.e. Sanjay @ Baba Jawaharlal Changanani. Applicant before me is incarcerated for the past almost one year, five months and 26 days.

11. That apart, he is suffering from medical ailments also. There is no suspect of any conspiracy or involvement of Applicant in so far as the present crime is concerned which is pleaded by the prosecution. Save and except the statement of the friend of Accused No.3 which also does not clearly link the role of Applicant in commission of the present crime. Hence, in view of above, I am of the opinion that

Applicant is entitled to bail as also on medical grounds as pleaded. Medical certificate placed before me shows that Applicant is suffering from serious medical ailment of throat having difficulty in breathing through mouth, ringing sensation in both ears, bilateral ear block sensation, breathlessness on exertion and has been diagnosed with pulmonary tuberculosis on AKT and is required to undertake laryngoscopy with biopsy. Record shows that Applicant underwent aforesaid tests and was diagnosed with differentiated SCC and was required to undergo 20-30 cycles of radiotherapy for pulmonary tuberculosis in the past. He also went hydrocele surgery at Sion Hospital in the past.

12. The medical condition of Applicant is such that on the neck he has polypoidal mass measuring 2 x 1.2 x 2.2 cm in the right lateral wall of hypo pharynx which affects his vocal cords and right thyroid cartilage.

13. In view of the above, the Applicant therefore stands enlarged on bail on the following conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on

the third Saturday between 10:00 a.m. to 12:00 p.m. initially for three months and thereafter as and when called;

- (iii) 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 revocation of this order;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court. He shall deposit his passport with the Trial Court within one week of his release;
- (v) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;
- (vii) Any infraction of the above conditions shall entail

cancellation of this order.

14. It is clarified that the observations in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case.

15. In view of the above directions, Bail Application stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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