

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3407 OF 2024

Arabshah Shahjahan Sayyed

.. Applicant

Versus

Union Of India and Anr.

.. Respondents

.....

- Ms. Falguni Brahmbhat a/w Mr. Sunil Chavan, Mr. Girish Palav, Mr. Kadir Lokhandwala and Ms. Arpita Dubey, Advocates for Applicant.
- Ms. Aruna Pai, for Respondent No.1.
- Mr. Hitendra J. Dedhia, APP for State.

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 07, 2025

P. C.:

1. Heard Ms. Brahmbhat, learned Advocate for Applicant; Ms. Pai, learned PP for Respondent No.1 and Mr. Dedhia, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail in connection with NDPS Spl. Case No.295/2023 in Crime No. 30 of 2022 registered with Narcotics Control Bureau, Mumbai Zonal Unit, Ballard Estate for the offence punishable under Sections 8(c) r/w section 21(c), 27A, 28, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. After hearing the learned Advocates on 27.03.2025 and 03.04.2025 following orders were passed:-

Order dated 27.03.2025:-

- “1. Heard Ms. Brahmhbhatt, learned Advocate for Applicant and Mr. Dedhia, learned APP for Respondent No.2 – State.*
- 2. Applicant is arraigned as accused No.1 in the present crime under the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”) and in incarcerated in jail since 20.08.2022 i.e. for the past 2 years and 8 months.*
- 3. Learned Advocate for Applicant would persuade the Court to consider the fact that Applicant is a taxi driver who drives a taxi on hire. It is borne out from the prosecution case that Applicant was hired for transferring the alleged contraband namely Codein Phosphate Syrup bottles in his taxi by Accused No.7 and it was Accused No.7 who was instrumental in the trafficking of the alleged contraband. She would submit that there are 7 accused persons in the present case, 5 out of whom have been already enlarged on bail. She would persuade the Court to consider the case of Applicant on parity with Accused No.5. She would submit that Accused No.5 was a tempo driver who under instructions of Accused No.7 ferried a substantial quantity of the same contraband and was apprehended, but he has been released on bail by this Court.*
- 4. From the prima facie facts of the present case it is seen that it is Accused No.7 who is involved in the illegal business and selling the alleged contraband namely Phensirest Cough Syrup. Be that as it may, considering the limited role of the Applicant which is prima facie borne out from the record of the case, the case of Applicant deserves to be considered on parity.*
- 5. In am informed that the principal contesting party in the present Application is Union of India. Their Affidavit is already filed on 21.02.2025.*
- 6. It is clarified that on the next adjourned date, if Respondent No.1 – Union of India’s Advocate does not remain present, this Court shall not await his / her presence and proceed with passing appropriate orders in accordance with law.*
- 7. Copy of this order shall be served on Respondent No.1 – Union of India by the Advocate for Applicant.*
- 8. Stand over to **03rd April, 2025.** To be placed on the ‘**Supplementary Board**’.”*

Order dated 03.04.2025:-

- “1. I have heard Ms. Brahmhbhatt, learned Advocate for Applicant; Ms. Pai, learned Special PP for Respondent No.1 – Union of India and Mr. Dedhia, learned APP for Respondent No.2 – State.*

2. *I have considered the submissions advanced by Ms. Pai, learned Special PP on the basis of the Affidavit-in-Reply appended at page No.973 of the Application filed by Mr. Satish Kumar, Authorized Officer on behalf of NCB, Mumbai Zonal Unit, Mumbai. After perusing the record and considering the submissions made, the Court has pointed out to the learned Special PP appearing on behalf of the prosecution to precisely point out the role attributed to the Applicant before the Court. It is undoubtedly an admitted position that Applicant was hired as a driver for driving the vehicle and was apprehended alongwith Accused Nos.2 to 4 together. The investigation done by the prosecution prima facie shows the indictment and involvement leading to Accused No.7 from whom a substantial quantity of the alleged contraband was seized.*

3. *Though Ms. Pai persuades the Court to consider the fact that Applicant had knowledge about the contents of the boxes in the vehicle which was intercepted he being a driver, still what is required by the prosecution is to show the prima facie intent of the Applicant in committing the offence. When the investigation has been carried out prima facie or rather in my opinion substantially it points out to the direct involvement and role of Accused No.2 and Accused No.7 in the present crime. From that perspective what is prayed for by the Applicant is that when Accused No.7 who is the main Accused has been released on bail, considering his much lesser role even as per the prosecution case, he would be entitled to bail on parity.*

4. *That apart, long incarceration for the past 2 years and 7 months is itself a ground which the Court would like to consider in the case of present Applicant.*

5. *Ms. Pai, learned Special PP would persuade the Court to allow her to take appropriate instructions on the precise role of the Applicant – Accused and apprise the Court on the next adjourned date.*

6. *List the Bail Application on 07th April 2025. To be treated as ‘Part-Heard’. To be listed under the caption ‘First on Board’.”*

4. Today, when the matter was argued learned Prosecutor Ms. Pai in her usual fairness would persuade the Court not to pass any *prima facie* indictment on merits of the matter lest it would hamper the trial of the prosecution before the trial Court. However, she would also draw my attention to the fact that one of the accused persons

namely Accused No.6 has been unsuccessful in getting enlarged on bail before this Court (*Coram: N.J. Jamadar, J.*) and said order has been upheld by the Hon'ble Supreme Court.

5. Be that as it may, *qua* the distinct role of the Applicant the aforesaid twin orders have been passed. Considering his long incarceration for more than 2 years 8 months pending trial and the ignominy of the Applicant being in jail pending trial and the distinct impossibility of trial being commenced or even completed in the near foreseeable future are relevant facts required to be considered by the Court for grant of bail. Applicant has no criminal antecedents. Hence, Bail Application is allowed subject to the following terms and conditions:-

(i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.20,000/- with one or two sureties in the like amount;

(ii) 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;

(iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

(iv) 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;

(v) 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;

(vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(vii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and

(viii) 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.

6. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on

the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

7. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]