

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL BAIL APPLICATION NO. 3619 OF 2024**

Sunday Okeke@ Sunny

.. Applicant

**Versus**

Union of India and Anr.

.. Respondents

- .....
- Ms. Ashwini Achari a/w Mr. Anish Pereira i/by Mr. Taraq Sayed, Advocates for Applicant.
  - Ms. Ruju Thakkar a/w Mr. Umesh Gupta i/by Ms. Sangeeta Yadav, for Respondent No.1-DRI.
  - Mr. Dinesh J. Haldankar, APP for State.
- .....

**CORAM : MILIND N. JADHAV, J.**

**DATE : APRIL 16, 2025**

**P. C.:**

**1.** Heard Ms. Achari, learned Advocate for Applicant; Ms. Thakkar, learned Advocate for Respondent No.1 – DRI and Mr. Haldankar, learned APP for State.

**2.** Applicant - accused has filed the present Application for regular bail in connection with Spl. Case No.573 of 2022 in Crime No. F.No.DRI/MZU/NS-II/INT-103/2022 for the offence punishable under Sections 8(c) r/w 22(c), 23(c), 25, 27A, 28, 29 and 30 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the '**NDPS Act**'). Applicant is a foreign national. He is arraigned as Accused No.3 in the present crime.

**3.** Admittedly, case of the prosecution is that Applicant namely Accused No.3 was apprehended and arrested on 22.10.2022 between 07:10 p.m. to 7:15 p.m. However, according to prosecution case and as argued by Ms. Thakkar when the Applicant was being taken to DRI office after his arrest he complained of some pain and therefore he was instead taken directly to the Sir J.J. Hospital for examination. On the same night at about 11:50 pm prosecution officer addressed letter to Sir J.J. Hospital which is appended in the additional Affidavit filed by prosecution, requesting Hospital authority to examine Applicant. Applicant was thereafter found to have suffered certain fractures rightly while attempting to evade arrest he had jumped from the second floor of the building which was raided by the prosecution. He was admitted to the Hospital for treatment.

**4.** The question raised before the Court by learned Advocate for Applicant is that *prima facie* transgression of provisions of Section 50 of the Cr.P.C.. It is the case of prosecution that for next 10 days Applicant remained admitted in Sir J.J. Hospital for treatment from 22.10.2022.

**5.** However, in the meanwhile prosecution filed Application on 23.10.2022 seeking judicial custody of the first and second accused persons and sought deferment of period of arrest for Accused No.3. This Application is appended at page No.234 of the Application.

However, while dealing with that Application, learned Magistrate passed order only with respect to Accused Nos. 1 and 2 without referring to Accused No.3 (Applicant before me) despite the prosecution stating in the title of the Application seeking deferment of period of arrest of Accused No.3 Order was accordingly passed on 23.10.2022 which is appended at page No.235. However, prosecution did not bring this omission to the notice of the Magistrate in the said order. On perusal of the order, learned Advocate for prosecution would also submit that the only reason that can be ascribed for the aforesaid omission is because subsequently a fresh Application was filed on 01.11.2022 seeking judicial custody of Accused No.3 i.e. present Applicant. This Application was determined by order dated 01.11.2022 after which Applicant was remanded to judicial custody till 10.11.2022 and his case was forwarded to the concerned Special Court.

**6.** The only question before the Court is the reason as to why Applicant was not produced before the Magistrate pursuant to his arrest shown on 23.10.2022 by the prosecution and even if the case for deferment of arrest of Applicant was moved in the remand Application of Accused Nos.1 and 2 the reason for not considering the same by the concerned Magistrate. Title of remand Application filed by prosecution on 23.10.2022 categorically seeks judicial custody for Accused Nos. 1 and 2 and it seeks deferment of arrest for Accused

No.3 namely present Applicant. Order appended at page No.235 of the Application does not deal with said Accused No.3 i.e. Applicant. In that view of the matter *prima facie* transgression has been seen.

7. The Constitution Bench of the Supreme Court in the case of ***State of Punjab Vs. Baldev Singh***<sup>1</sup> in paragraph No. 28 has commented on legitimacy of judicial process coming under the cloud if acts of lawlessness by the investigating agency are condoned during search operations and has held that if so done it may undermine the respect for law and may have the effect of unconsciously compromising the administration of justice which cannot be permitted. The Supreme Court concluded the above finding in the context of NDPS Act and particularly the factor of widespread illiteracy among persons subject to investigation for drug offences. It categorically held that it must be borne in mind that severer the punishment, greater has to be the care taken to see that all safeguards provided in statute are scrupulously followed. There is no reason as to why the empowered Officer / Investigating Officer should shirk or derelict from affording a real opportunity to the suspect and comply with the procedural safeguards which serve a dual purpose – to protect a person against false accusation and frivolous charges as also compliance of Sections 41, 42 and 43 of the NDPS Act alongwith Section 50.

---

1 (1999) 3 SCC 977

**8.** The Supreme Court held that in every case the end result is important but the means to achieve it must remain above board. It held that remedy cannot be worse than the disease itself. It held that the NDPS Act provides for a stringent punishment where a statute confers such drastic powers and seeks to deprive a citizen of its liberty for not less than ten years as also makes stringent provisions for grant of bail, scrupulous compliance of the statutory provisions therefore must be insisted upon.

**9.** In the present case it is *prima facie* seen from the prosecution case that Accused No.3 is arrested on 22.10.2022. He is admitted to the hospital on the night of 22.10.2022. His judicial custody is sought only on 01.11.2022 after 10 days. In between his deferment of arrest is sought in the application but it is not dealt with by the Court neither the prosecution took any steps to pursue the application. *Prima facie* once this is the position emanating from the record, transgression of Section 50 of the Cr.P.C. in arrest of Accused No.3 is noticed. That apart, long incarceration of Applicant since 22.10.2022 pending trial and no recovery of any alleged contraband from his custody and possession, entitle him to grant of bail.

**10.** In view of the above *prima facie* observations and the decision referred to hereinabove, 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.50,000/- 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 01.00 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; Applicant shall

deposit his passport, if any, with the Trial Court within 2 weeks of his release from prison on bail;

(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.

(ix) The concerned prosecuting Agency shall immediately communicate this order of grant of bail to the concerned Registration Officer appointed under Rule 3 of the Registration of Foreigners Rules, 1992 within the meaning of the Foreigners Act, 1946. This condition is added in view of the discretion of the Supreme Court in the case of *Frank Vitus v. Narcotics Control Bureau & Ors.*<sup>2</sup>

**11.** 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.

---

2 Criminal Appeal No.2814-2815 of 2024 decided on 06.01.2025.

**12.** Bail Application is allowed and disposed.

ER. Rajput

[ MILIND N. JADHAV, J. ]