

Ajay

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

CRIMINAL BAIL APPLICATION NO. 4069 OF 2024

Mohd. Anwar Farooqui Ahmed

.. Applicant

Versus

Directorate of Revenue Intelligence and Anr.

.. Respondents

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- Mr. Ayaz Khan a/w Mr. Dilip Mishra a/w Ms. Zehra Charania and Ms. Mallika Sharma i/b Mr. Rajendra Bidkar, Advocates for Applicant.
 - Mr. Jitendra B. Mishra a/w Ms. Sangeeta Yadav a/w Mr. Rupesh Dubey a/w Mr. Umesh Gupta, Advocates for Respondent.
 - Ms. Megha S. Bajoria, APP for State.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 17, 2025

P.C.:

1. Heard Mr. Khan, learned Advocate for Applicant, Mr. Mishra, learned Advocate for Respondent and Ms. Bajoria, learned APP for State.

2. This Application is filed for seeking regular bail in connection with File No. DRI/MZUC/INT-03/2020 of Directorate of Revenue Intelligence (for short “**DRI**”), Mumbai in respect of the offences punishable under Sections 8 (c) readwith Section 21 and 21(c), 29, 27(A), 28 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “**NDPS Act**”). Applicant is Accused No.2.

3. The brief facts of the case are as under:-

3.1. On 11.01.2020, a specific intelligence was received by the officers of the DRI - Respondent No. 1 to the effect that a white colored Volkswagen Vento Car bearing registration No. MH-01-BB-9510 which was parked somewhere near Nerul Station, Sector-3, Nerul (East), Navi Mumbai would be used for transporting large quantity of alleged contraband Mephedrone (for short “**MD**”) by three persons viz. Mohd. Sikander Cheemu - main Accused No. 1, Anwar Farooqui – Accused No. 2 i.e. present Applicant and Mohd. Kalim Rauf Sayyed- Accused No. 3. The aforesaid operation was being controlled by one Mr. Kailash Rajput who was based in Dubai with the assistance of his brother namely Mr. Naveen Nitin Rajput who was based in Mumbai then.

3.2. Immediately acting on the said information, raid was arranged by DRI at the spot. The said car was spotted at a place near Hotel Rangoli and it was observed that nobody was occupying the said car. Hence, vigilance was mounted and in some time Applicant came on the spot at 09:50 am and opened the car. He was accosted by the officers and search of the car was carried out. Contraband was recovered from the boot space (dicky) of the said car in presence of two panchas.

3.3. It was observed that two polythene bags were found having the material stuffed lying inside. The Officers enquired with the

Applicant whether he was the actual owner of the said material and the car, upon which Applicant stated that he was not aware of the actual owner of the car and he was transporting the said material on the instructions of Accused No. 1.

3.4. Applicant then led the raiding team to the other accused persons and they were all apprehended and examined at DRI Office situated at 13, Sir Vithaldas Thackersey Marg, New Marine Lines, Mumbai – 400 020.

3.5. A detailed examination and inventory of the recovered two polythene bags containing 50kg off-white crystalline powder purported to be MD was seized along with all the packing material under the provisions of NDPS Act. The car from which contraband was found was seized. After due investigation, Charge Sheet was filed and the substance recovered was tested through Central Revenue Control Laboratory (CRCL) and the same tested positive as MD. As Applicant was found in possession of the contraband, he was placed under arrest and C.R. was registered.

4. Applicant is now in judicial custody and investigation is over in the present case. After completion of the investigation, Charge Sheet was filed in the present case numbered as Special Case No. 352 of 2020. The same is pending before the learned Special Judge for NDPS at Thane.

5. Thereafter, Accused No. 1 filed Bail Application before this Court which was rejected and instead it expedited the matter before the Trial Court. As the matter did not progress, Accused No. 1 again approached this Court for the second time vide Bail Application No.2628 of 2024 and this time the Court granted bail on account of slow progress of trial and long incarceration. Furthermore, it vacated the order of expediting the matter.

6. Subsequently, Applicant filed bail application before the learned Trial Court claiming parity. The same was rejected by the Court by order dated 05.09.2024. Hence, being aggrieved by the rejection of bail by learned Trial Court, Applicant has approached before this Hon'ble Court.

7. Mr. Khan, learned Advocate for Applicant would submit that Applicant is falsely implicated in the present case. He would submit that this Court was pleased to expedite the matter in Bail Application filed by the Accused No.1 but charge was framed on 09.01.2024 and the first witness was examined on 13.06.2024 and second witness was examined on 19.06.2024.

7.1. He would submit that by considering the slow pace of the trial, the this Court granted bail to Accused No.1 and vacated the order of expediting the hearing of the matter leading to further protraction of trial. He would submit that Applicant has been in custody since

11.01.2020 i.e. on the same date as that of Accused No.1. He would submit that the co-accused Nos. 1, 3 and 4 are already enlarged on bail. Hence, parity can be applied to the case of the Applicant and also this long incarceration of the Applicant.

7.2. In support of his submissions, Mr. Khan has referred to and relied upon on the following decisions of the Supreme Court:-

- (i) *Rabi Prakash Vs. The State of Odisha*¹;
- (ii) *Tinku Tagadgiri Vs. The State of Odisha*²;
- (iii) *Babor Ali Mondal Vs. The State of West Bengal*³;
- (iv) *Ankur Chaudhary Vs. State of Madhya Pradesh*⁴; and
- (v) *Vijay Singh Vs. Union of India*⁵.

7.3. He would submit that Applicant is ready and willing to abide by the bail conditions if this Court releases him on bail. He would also submit that Applicant is having permanent residence and deep roots in society. Hence, there is no probability of his absconding from the due process of law.

8. *PER-CONTRA*, Mr. Mishra, learned Advocate for Respondents on behalf of DRI, would submit that it was revealed by Applicant that he had undertaken such a trip in the past and had transported the drugs from Panvel to Chakala for financial

1 Special Leave to Appeal (Crl.) No.4169/2023 decided on 13.07.2023

2 Special Leave to Appeal (Crl.) No.12844/2023 decided on 17.01.2024

3 Criminal Appeal No.3349 of 2024 decided on 13.08.2024

4 Special Leave to Appeal (Crl.) No.4648/2024 decided on 28.05.2024

5 SLP (Criminal) Diary No.43071/2024 decided on 03.12.2024

consideration which he received from Accused No. 1 and therefore he is involved in a criminal conspiracy to possess and transport contraband and hence has committed offence under the NDPS Act. He would submit that Applicant is trying to mislead the Court if the Trial Court order is seen wherein it is observed that there are two orders during the period 09.01.2024 to 13.06.2024 as mentioned by the Applicant which are as under:-

8.1. He would submit that order dated 22.04.2024 passed by the Trial Court notes that the District Court, Thane by Office order No.Judl./4416/2024 dated 08.04.2024 transfer the subject NDPS case to the Court presently trying the subject case.

8.2. He would submit that prosecution has already examined 3 witnesses which has been noted by the Trial Court in its order dated 05.09.2024 and the prosecution is ready to complete the trial expeditiously. He would submit that this is a case in which 50 kg MD has been seized and as there is commercial quantity involved, there is an embargo under Section 37 of the NDPS Act for grant of bail. He would further submit that only on the ground of long incarceration and delay in trial as well as parity, bail cannot be granted.

8.3. He would submit that corroborative evidence gathered and the statements of accused have named the Applicant and they have given details of the role played by him. Furthermore he would submit

that trial in the instant case has already commenced and the learned Trial Court is hearing the case on fast track basis and witnesses are being produced before the trial court on the assigned dates for recording of evidence. In view of his aforesaid submissions he would pray for rejection of the Bail Application.

9. Ms. Bajoria, learned APP for the State would also support and adopt the submissions made by Mr. Mishra and would pray for rejection of the present Bail Application.

10. From the reading of Section 37 of the Act, it becomes clear that the legislature intends to deny bail to individual alleged to be in possession of commercial quantity of contraband in absence of court subscribing to a contrary view, thus it does not rule out the facet of discretion; furthermore, the Court must be satisfied that the accused is unlikely to re-offend. However, while dealing with Bail Applications, the material available for adjudication is limited; in such cases, if we look realistically the provisions of Section 37 leaves a limited room for a possibility of granting bail to the accused in such a case. However such limitation would create a dichotomy in the current scenario where trials are taking perpetuity to be concluded and prisons are also simultaneously overcrowded in some segments. This Court regularly deals with Bail Applications of under-trials who have been in custody for long incarceration, we are also equally aware of the conditions of

our prisons. Recently, in one of the cases before me, a Report dated 12.12.2024 by the Superintendent of Mumbai Central Prison addressed to the Chief Government Pleader was placed which stated that the Mumbai Central Prison (Arthur Road Jail) is overcrowded beyond its sanctioned capacity by more than 5 – 6 times and every barrack sanctioned to house 50 inmates, as on date houses anywhere between 220 – 250 inmates. This situation is inhumane, but it also cannot be forgotten that addiction is also a serious issue qua the society, and provisions such as Section 37 act as a deterrent to prospective wrongdoers. This situation leads us to the proposition: ***“How can Courts find a balance between the two polarities?”***

11. In the case of *Rabi Prakash* (1st *supra*) the Supreme Court considering the long incarceration has granted bail to under trial accused who was incarcerated for 3 years and 6 months . The contraband in question was Ganja, the commercial quantity of the contraband is 20 Kilograms. Recovery of 247 Kilograms was allegedly made from the accused despite which SC invoking the right to speedy justice flowing from Article 21 granted bail to the Accused.

12. In the case of *Tinku Vs. State (NCT of Delhi)*⁶ the Delhi High Court considering the long incarceration has granted bail to under trial accused who was incarcerated for 2 years and 5 months. The contraband in question was Heroin, the commercial quantity of the

⁶ 2024 SCC OnLine Del 9132

contraband is 250 grams. Recovery of 945 grams was allegedly made from the accused despite which HC invoking the right to speedy justice flowing from Article 21 granted bail to the Accused.

13. Considering that the main Accused No. 1 as also other Co-accused have already been enlarged on bail by this Court and position of law discussed in the foregoing paragraphs and the long incarceration of accused, I am inclined to grant bail to the Applicant – Accused No. 2 on the following terms:-

- (i) Applicant – Mohd. Anwar Farooqui Ahmed is directed to be released on bail on furnishing P.R. Bond of Rs.25,000/- (Rs. Twenty Five Thousand only) with one surety of the like amount;
- (ii) Applicant shall not influence any witness or tamper with the evidence in any manner;
- (iii) Applicant shall attend interrogation if called for by the Investigating Officer since Charge sheet is already filed;
- (iv) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all hearing 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;

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

(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, as applicable; and

(vii) Any infraction of the conditions shall entail cancellation of bail granted to the Applicant.

14. It is clarified that the observations in this order are *prima facie* in nature for the limited purpose of granting Bail.

15. All concerned shall act on production of a server copy of the order.

16. Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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by HARSHADA
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