

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4100 OF 2024

Mohammed Zaman Hidaytullah Khan .. Applicant

Versus

The Union of India and Ors. .. Respondents

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- Mr. Taraq K. Sayyed a/w Mr. Mubin Solkar, Ms. Ashwini Achari, Mr. Anish Pereira, Mr. Tahir Hussain and Mr. Anas Shaikh, Advocates for Applicant.
- Mr. Shriram Shirsat, Special Counsel a/w Ms. Karishma Rajesh and Mr. Nikhil Daga for Respondent - NCB.
- Ms. Savita M. Yadav, APP for Respondent – State.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 24, 2025

P. C.:

1. Heard Mr. Sayyed, learned Advocate for Applicant and Mr. Shirsat, learned Special Counsel for Respondent – NCB.

2. Applicant - accused has filed the present Application for regular bail in connection with Spl. Case No.497 of 2021 in Crime No. 07 of 2021 registered with NCB, Mumbai Zonal Unit, Mumbai under Sections 8(c) r/w 21(a), 22(c), 25, 25A, 27, 27A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. Applicant before me is arrayed as Accused No.10 in the present case. In all there are 15 accused persons. Even according to the prosecution no conscious recovery of the alleged contraband from the possession of Applicant is made out. Learned APP informs that

Court that 5 of the accused persons namely Accused Nos.11 to 15 are absconding till date and the trial has commenced against remaining 10 accused persons.

3.1. From the prosecution case it is *prima facie* seen that Accused Nos.2, 7, 9 and 10 (Applicant before me) have been arrested with no conscious possession and recovery of alleged contraband from them but only on the ground of nexus with the other co-accused persons.

3.2. Order dated 19th November, 2024 in case of Accused No.9 was passed by this Court (*Coram: Manish Pitale, J.*) which is appended at page No.37 of the Application. *Prima facie* it is seen that role of the Applicants is similar to that of Accused No.9 who has been enlarged on bail. What was contended is that there was a nexus between said Accused No.9 with other co-accused persons and his indictment was based on call detail record and Whatsapp chats sought to be relied upon by the prosecution. In the present case also the same contention is raised. When the matter was heard on the previous date i.e. 21.02.2025, after hearing learned Advocate and learned APP following order was passed:-

“1. Heard Mr. Sayed, learned Advocate for Applicant’ Mr. Shirsat, learned Special Counsel for Respondents and Ms. Yadav, learned APP for State.

2. Applicant is arraigned as accused No.10 and he is in incarceration in an NDPS offence since 05.07.2021. There are several other accused persons and prosecution case is that they all in

connivance with each other dealt with the alleged contraband which has been confiscated and seized.

3. *Mr. Sayed at the outset would draw my attention to two orders passed by this Court i.e. order dated 01.11.2023 passed in Bail Application No.4257/2011 (Coram: G.A. Sanap, J.) in which this Court had expedited the trial and directed the same to be completed within a period of six months and further order dated 08.05.2024 (Coram: Prithviraj K. Chavan, J.) wherein on the request made by learned Additional Sessions Judge, Thane seeking one year extension of time to dispose of the trial, the time was extended by one year. Though that time would come to an end in the month of May 2025, Mr. Sayed has persuaded the Court to hear the present Bail Application considering the abysmal progress of the trial wherein only three witnesses of the prosecution are examined out of 33 possible witnesses which they desire to examine till date. In addition thereto, he would place on record the order dated 19.11.2024 passed in Bail Application No.978 of 2022 (Coram: Manish Pitale, J.) in respect of accused No.9 in the present crime and would submit that this court has granted bail to him on the basis of his role and indictment by prosecution in the present case.*

4. *Mr. Shirsat would submit that indictment of accused in the present case is based on WhatsApp chats / calls and CDRs of the present Applicant with other co-accused which would show the complicity of the Applicant in the present crime. Mr. Sayed would immediately counter this allegation of the prosecution against the Applicant by stating that the alleged WhatsApp chats / calls between the Applicant and other co-accused pertain to the period prior to one year before the date of the present crime in question and therefore that cannot be used as a basis to oppose the Bail Application. That apart he would submit that WhatsApp chats / calls and CDRs without adequate and appropriate corroboration to prima facie prove complicity of the Applicant in the present crime in question cannot be relied upon as per se they cannot be held as admissible and it would be a matter of trial to be proved by the prosecution in trial as held by the Supreme Court in the following cases:-*

(i) State v. Pallulabid Ahmad Arimutta¹;

(ii) Bharat Chaudhary v. Union of India²;

(iii) Mohd. Hussain Ahmed Shaikh @Babool Bhai v. State of Maharashtra³.

5. *Mr. Shirsat would submit that he be permitted to place on record appropriate citations and decisions of the Supreme Court to counter the submissions made by Mr. Sayed as also the above decisions with respect to considering complicity of accused persons on the basis of WhatsApp chats / calls and CDRs. At his request time of one week to produce the relevant citations is granted.*

6. *This matter shall be treated as “Part-Heard” and heard on 5th March, 2025.”*

4. After arguments have been concluded the aforesaid order was passed.

5. At the outset, Mr. Shirsat, learned Special Counsel appearing on behalf of Respondent would place list of 6 witnesses which are yet to be examined by the prosecution in the present case and would persuade the Court to consider the prosecution to complete the trial and not release the Applicant on bail in the meanwhile. *Prima facie* record of the case shows that two extensions were already granted by this Court, initially an extension of 6 months and thereafter another extension of one year while rejecting Bail Application of other co-accused persons. Hence the first submission of the prosecution that Application of the Applicant be not considered on this ground is rejected by this Court. What impels me to consider the Application of the Applicant is his long incarceration for the past 3 years 8 months and 19 days pending trial. That apart role of the present accused needs to be *prima facie* considered. Though Mr. Shirsat, learned Special Counsel has vehemently argued that present Applicant was externed and despite the said order he was found at his house by breaking the law should be an added ground to consider his conduct in the present case. That *prima facie* at this stage would be immaterial to consider. The only point of contention is the WhatsApp conversation which are sought to be relied upon by the prosecution.

6. In view of the above *prima facie* observations and particularly the long incarceration of the Applicant for the past 3 years

8 months and 19 days pending trial, I am inclined to consider the Application of the Applicant. Hence, Bail Application is allowed subject to the following terms and conditions:-

(i) Applicant is directed to be released on bail in connection with C.R. No.07 of 2021 registered by Narcotic Control Bureau, Mumbai Zonal Unit, Mumbai on furnishing PR. Bond in the sum of Rs.50,000/- and one or two sureties in the like amount to the satisfaction of the trial Court;

(ii) Applicant is permitted to furnish provisional cash bail of Rs.50,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.50,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;

(iv) Applicant upon being released on bail, shall report to the office of Narcotics Control Bureau on first Monday of each month between 10:00 a.m. and 12:00 noon during the pendency of trial;

(v) Upon release, within one week, the Applicant shall inform the Investigating Officer as well as the trial Court about his contact number and residential address and

update the same in case of any change;

(vi) Applicant shall co-operate with the trial Court in completing the proceedings expeditiously and attend the proceedings before the trial Court on each and every date, unless specifically exempted;

(vii) Applicant shall not tamper with the evidence of the prosecution in any manner. He shall not undertake any action that may influence the informant, witnesses and other persons concerned with the case;

7. 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.

8. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]