

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4139 OF 2024

Chidiebere Kingsley Nawchara

.. Applicant

Versus

Union of India & Anr.

.. Respondents

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- Ms. Zehra Charania i/by Mr. Ayaz Khan for Applicant
- Mr. Umesh Gupta i/by Ms. Sangeeta Yadav & Ms. Ruju Thakkar for Respondent No. 1 - UOI
- Mr. Balraj B. Kulkarni, APP for Respondent No. 2 - State

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 28, 2025

P. C.:

1. Heard Ms. Charania, learned Advocate for Applicant, Mr. Gupta, learned Advocate for Respondent No. 1 - UOI and Mr. Kulkarni, learned APP for State.

2. Applicant is indicted and arrested in an offence under NDPS Act and he is in incarceration since 16.03.2023. Ms. Charania would submit that indictment of the Applicant is solely based on the statement of the co-accused who has been apprehended and arrested along with commercial quantity of the alleged contraband i.e. Heroin. She would submit that since there has been no recovery of any contraband from the conscious possession of Applicant and his indictment is solely based on the statement of co-accused, present Application be considered for bail considering his long incarceration as

the allegation and case of prosecution can only be proved at the stage of trial. That apart she would submit that statement of the co-accused cannot be used against the Applicant at the interim stage considering its veracity as it is recorded in enquiry by the NDPS Officer under Section 67 of the NDPS Act and it is hit by the provisions of Sections 25 to 27 of the Indian Evidence Act.

3. It is seen that Union of India is the principal Contesting Party. Mr. Gupta, learned Advocate enters appearance for the Union of India. Union of India is directed to its affidavit in reply within a period of three positively weeks from today.

4. Considering the submissions made by learned advocate for Applicant, the present Application is fully covered by the decision of the Supreme Court in the case of *Tofan Singh v. State of Tamil Nadu*¹. That apart there is also no recovery of any alleged contraband from him. He is in prison for the past more than 2 years pending trial. Hence it is clarified that if the Union of India does not file its affidavit, no extension of time shall be given by the Court. Further if Advocate / Counsel for Union of India is not present on the next adjourned date, this Court shall not adjourn the matter and decide the same in accordance with law. Court is constrained to pass such directions because time and again the Union of India is not adhering to the

¹ (2021) 4 SCC 1

orders passed by this Court and their Advocates do not remain present when matters are called out and even if they remain present, the Advocates appearing for Union of India seek adjournments for filing reply. Hence Union of India is directed to take cognizance of this order and ensure that orders of this Court are not breached and are complied with.

5. Stand over to 23rd April, 2025. To be placed on Supplementary Board.

Amberkar

[MILIND N. JADHAV, J.]

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