

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4139 OF 2024

Chidiebere Kingsley Nawchara

.. Applicant

Versus

Union Of India and Anr.

.. Respondents

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- Ms. Zehra Charania a/w Mr. Ayaz Khan, Mr. Dilip Mishra and Ms. Mallika Sharma, Advocates for Applicant.
- Ms. Ruju Thakkar a/w Ms. Sangeeta Yadav and Mr. Priyanshu Doshi, for Respondent – DRI.
- Mr. Balraj B. Kulkarni, APP for State.

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CORAM : MILIND N. JADHAV, J.

DATE : MAY 05, 2025

P. C.:

1. Heard Mr. Charania, learned Advocate for Applicant; Ms. Thakkar, learned Special PP for Respondent – DRI and Mr. Kulkarni, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail in connection with Crime No.37 of 2023 registered with Directorate of Revenue Intelligence for the offence punishable under Sections 8(c), 21(c), 23(c), 27A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "**NDPS Act**").

3. On 28.03.2025 after hearing learned Advocates at the Bar following order was passed:-

“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**. 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 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**.”

4. In compliance of aforesaid order and in reply to the submissions made by learned Advocate for Applicant Ms. Thakkar,

learned Special PP has filed Affidavit-in-Reply dated 12.12.2024 of Kumar Ambrish, Deputy Director, DRI, Mumbai which is placed before me today. Same is taken on record.

4.1. I am constrained to observe that if the Affidavit-in-Reply was notarized on 12.12.2024, it was the duty of the concerned Advocate and the counsel appearing in the matter to file the said Affidavit-in-Reply and duly serve it on the other side. It is only today when the matter was called out in the afternoon session, despite being on the supplementary board in order to ensure that old Applications are heard, in a reluctant fashion the holding Advocate appearing in the matter has filed Affidavit-in-Reply and that too only after the Court asked the said holding Advocate.

4.2. *Prima facie* there is no answer given in the Affidavit-in-Reply to the questions which have been *prima facie* listed by the Court in paragraph Nos.2 and 4 of its aforesaid order. Said Affidavit-in-Reply is nothing but a mere reiteration of the facts of the case and nothing more. The prosecution is relying upon WhatsApp chats as argued by Ms. Thakkar through VC. Said chats unless they show the live link to establish the complicity of the person involved in the crime cannot be referred to and relied upon at the stage of bail as held by the Supreme Court in the case of ***Bharat Chaudhary Vs. Union of India***¹. At the stage

¹ (2021) 20 SCC 50

of bail complicity of the Applicant cannot be considered on the basis of hearsay evidence which is sought to be referred to and relied upon by the prosecution. That apart case of the Applicant is *prima facie* fully covered by the decision of Supreme Court in the ***Tofan Singh Vs. State of Tamil Nadu***² as opined and held by this Court in the previous order. Since indictment of Applicant is solely based on the statement of co-accused person and the facet of his long incarceration in prison for more than 2 years 2 month pending trial and commencement and completion of trial being a distinct impossibility, in that view of the matter I am of the opinion that Applicant can be released on bail.

5. In view of the above *prima facie* observations, 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.25,000/- 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;

² (2021) 4 SCC 1

(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;

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

(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; and

(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 decision of the Supreme Court in the case of *Frank Vitus v. Narcotics Control Bureau & Ors*³.

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.]

³ Criminal Appeal No.2814-2815 of 2024 decided on 06.01.2025.