

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2624 OF 2024

Gandhi Vidya Singh .. Applicant
Versus
State of Maharashtra .. Respondent

WITH
BAIL APPLICATION NO. 4921 OF 2024

Carrington Jerry Dibrio .. Applicant
Versus
State of Maharashtra .. Respondent

BAIL APPLICATION NO. 5260 OF 2024

Harshad Parulekar .. Applicant
Versus
State of Maharashtra .. Respondent

WITH
BAIL APPLICATION NO. 4593 OF 2024

Sachin Kiran Nande .. Applicant
Versus
State of Maharashtra .. Respondent

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- Mr. Shriganesh Salba Sawalkar a/w Ms. Vishruti G. Tari and Ms. Shraddha Sagvekar for Applicant in BA 2624/24
- Mr. Atul Sarpande a/w Mr. Pranay Saraf, Mr. Aniket Mukadam, Mr. Diptendu Bose and Mr. Kamlesh Satre for Applicant in BA 4921/24
- Ms. Munira Palanwala a/w Ms. Sumaiya Khan, Ms. Kainat Sayed and Ms. Deepa Amati for Applicants in BA 5260/24 & 4593/24
- Ms. Savita M. Yaday, APP for State in BA 5260/24
- Ms. Megha Bajoria, APP for State in BA 4593/24
- Mr. S.A. Karmakar, APP for State in BA 2624/24
- Mr. Hitendra J. Dedhia, APP for State in BA 4921/24

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CORAM : MILIND N. JADHAV, J.

DATE : MAY 06, 2025

P.C.:-

1. The Applicants in all four Applications are seeking Regular Bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with C.R.No. 86 of 2023 registered with Anti – Narcotics Cell, Bandra Unit for offences punishable under Sections 8 (c), 20 (a) (c) and 29 of Narcotic Drug and Psychotropic Substances Act, 1985 (for short ‘NDPS’).

2. There are 8 accused persons in the present crime. Accused No. 4 is released on bail. Applicant in Bail Application No. 2624 of 2024 is arraigned as Accused No. 5. Applicant in Bail Application No. 4921 of 2024 is arraigned as Accused No. 2. Applicant in Bail Application No. 5260 of 2024 is arraigned as Accused No. 3 and Applicant in Bail Application No. 4593 of 2024 is arraigned as Accused No. 1.

3. This is a group of four bail applications. Bail Application 4593 of 2024 is filed by Accused No. 1 who was apprehended and arrested alongwith Accused No. 2 in a chance recovery. It is prosecution case that 200 grams of charas being intermediate quantity is recovered from Accused No. 1 however no contraband is recovered from the possession of Accused No. 2 and both are arrested on

12.10.2023. According to prosecution Accused No. 2 is a dealer in contraband and narcotic substances. There are 3 antecedents against Accused no. 2 out of which two are under the NDPS Act in which he is enlarged on bail.

4. I have heard learned Advocate Ms. Palanpurwala appearing on behalf of Accused Nos. 1 and 3 and Mr. Sarpande learned Advocate appearing on behalf of Accused No. 2 and Mr. Sawalkar, learned Advocate appearing for Accused No. 5 and perused the record of the case.

5. According to prosecution Accused No. 2 in his disclosure statement under Section 67 inquiry disclosed the name of Accused No. 3 being involved in trafficking of drugs. Accused No. 3 was arrested on 12.10.2023 i.e. the same date and he led the prosecution to a rented premises in the name of his mother-in-law and according to prosecution, they recovered 600 grams of charas, 950 grams of ganja, both being intermediate quantity from the said premises. Thereafter Accused No. 2 simultaneously disclosed the name of Accused No. 4 as a consumer of drugs and Accused No. 5 being a carrier. Both Accused Nos. 4 and 5 were arrested. Accused No. 4 is enlarged on bail. Accused No. 5 was arrested on 06.11.2023 however no contraband was recovered from the conscious possession of Accused Nos. 4 and 5

hence Mr. Sawalkar, learned Advocate appearing on behalf of Accused No. 5 pleads parity with Accused No. 4 for grant of bail.

6. The prosecution side comprises of Ms. Yadav, opposing the Bail Application No. 5260/24, Ms. Bajoria, opposing the Bail Application No.4593/24, Mr. Karmakar, opposing the Bail Application No. 2624/24 and Mr. Dedhia, opposing the Bail Application No. 4921/24, they have in unison opposed the Bail Applications and contended that Accused Nos. 1 and 2 are in the business of trafficking contraband, that Accused No. 1 engaged Accused No. 5 through Accused No. 2 as a carrier of alleged contraband ganja from Delhi to Mumbai. It is further contended that Accused No.1 paid Rs. 20,000 to Accused No. 5 to transport the contraband from Delhi to Mumbai, that Accused No. 2 paid for the flight ticket of Accused no. 5 from Mumbai to Delhi and train ticket from Delhi to Mumbai. It is further contended that Accused No.1 paid Rs. 20,000/- to Accused No. 5 to transport the contraband from Delhi to Mumbai.

7. Most importantly prosecution have placed reliance on CDRs between Accused No. 1 and Accused No. 5 (47 calls), CDRs between Accused No. 1 and Accused No.2 (21 calls) and CDRs between Accused No. 2 and Accused No. 4 (36 calls) to argue that there was complicity, conspiracy and pre-meditation to traffic

contraband between them. Hence they would persuade the Court to reject the present Applications.

8. I have heard the rival submissions of learned Advocates at the bar and perused the record of the case.

9. *Prima facie* case of the prosecution against all 4 accused persons before me is based upon co-accused statements and hearsay evidence. That apart Accused No.1 being arrested with intermediate quantity of the alleged contraband, Accused No.4 having being released on bail and incarceration of the Applicants before me for the past more than 1 year 6 months in prison, persuades me to consider the bail Applications.

9.1. The Supreme Court in the case of *Tofan Singh Vs. State of Tamil Nadu*¹ Court held that statements recorded by NDPS officers could be construed as statements to police officers given their duties and responsibilities in preventing and detecting crime under the NDPS Act. It held that right against self-incrimination and right to privacy under Article 20(3) and Article 21 of the Constitution apply to confessions recorded under Section 67 of the NDPS Act. It also held that officers under the NDPS Act should be construed as 'police officers' under Section 25 of the Evidence Act to prevent coercion in recording confessions and that confessions made before such officers

1 (2021) 4 SCC 1

are inadmissible as evidence to protect fundamental rights under Articles 20(3) and 21 of the Constitution.

9.2. In the case of ***Phundreimayum Yas Khan Vs. State (NCT of Delhi)***² the Delhi High Court has observed that disclosure statement of co-accused is *per se* not admissible without there being any corroboration thereof. Relevant paragraph No.24 of the said judgement reads thus:-

“24. The case of the prosecution, in so far as the applicant is concerned, is circumstantial, i.e. based solely on disclosure statement of the co-accused Sayed Javed Hussain which is per se not admissible without there being any corroboration. The prosecution has not been able to establish any connection between the subject offence and the location/CDRs of the accused persons, where the applicant is alleged to be present at the time when the contraband was collected by Sayed Javed Hussain. Merely because the applicant had been having frequent calls with the co-accused, would not be sufficient to hold that applicant is guilty of the subject offence.”

10. In the case of ***Jasbir Singh Vs. Narcotics Control Bureau***³ the Delhi High Court in paragraph Nos.63, 67 and 68 of its judgment while interpreting Section 67 of the NDPS Act *vis-a-vis* Sections 25 and 27 of the Indian Evidence Act, 1872 held as under:-

“63. As statements recorded under Section 67 NDPS Act are inadmissible being hit by Section 25 IEA, the only way to make any part of such statements admissible, is by way of Section 27 IEA which creates an exception and allows only such part of a confessional statement, being information leading to discovery of some fact not previously in the knowledge of the police officer. In the present case, none of the statements of the

2 2023 SCC OnLine 135

3 (2023) SCC OnLine Del 134

Applicant lead to any discovery of a fact", and hence, the statutory bar to their admissibility and reliability is attracted.

64. ***

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67. With regards to applicability of Section 27 IEA, the fact so discovered is admissible when accompanied by the recovery of a material object and does not include purely mental or psychological facts. It is relevant to note the observations of this Hon"ble Court in State v. Navjot Sandhu @ Afsan Guru Crl. A. No. 80/2003 wherein this Hon"ble Court, after placing reliance on Pulukuri Kottaya and Ors v. The King-Emperor 1946 SCC OnLine PC 49, and several other judgments of the Hon"ble Supreme Court and other courts, summarized the law governing Section 27 IEA as follows:

"396. We, therefore, hold that in order that Section 27 may be brought in aid, the prosecution must establish:—

1. That consequent to the information given by the accused, it led to the discovery of some fact stated by him.

2. The fact discovered must be one which was not within the knowledge of the police and the knowledge of the fact was for the first time derived from the information given by the accused.

3. Information given by the accused must lead to the discovery of a fact which is the direct outcome of such information.

4. The discovery of the fact must be in relation to a material object and of course would then embrace within its fold the mental condition i.e. the knowledge of the accused of the place from where the object was produced and the knowledge that it was there.

5. Only such portion of the information as is distinctly connected with the said discovery is admissible.

6. The discovery of the fact must relate to the commission of some offence."

68. Therefore, for any part of the alleged disclosures of the Applicant to be admissible, it was necessary that such disclosure led the Respondent to recovery of any contraband, or any other 'fact' related to the alleged offences. Given that none of the disclosures of the Applicant, except (at best for the recovery of a contraband involving quantity lesser than small quantity) led to the discovery of any object, or a "new fact" thereby, such disclosures under section 67 NDPS Act are held inadmissible in evidence."

11. As apparent from the foregoing, statements under Section 67 of NDPS Act are hit by Section 25 of IEA. One may argue that as per provisions of Section 27 of the IEA, recovery made from other co-accused based on such statements can be used to garner admissibility of such statements. A Bail Court need not delve into such propositions, it can be expounded based on the facts of each case by a Court adjudicating a trial.

12. However the prosecution has not answered as to from whom the alleged contraband was procured by Accused No. 5 in Delhi. According to prosecution case emanating from record one Mr. Deva Singh is the supplier of the alleged intermediate quantity of contraband recovered in the present case. In any event rigors of Section 37 of the NDPS Act will not apply in the present case.

13. It is *prima facie* seen that the case of prosecution solely rests on the basis of CDRs which is *prima facie* weak evidence as at this stage there is no live link established to *prima facie* show complicity of the accused persons – Applicants before me in the crime. Reliance on mere CDRs that is on number of calls made cannot be relied upon at this stage without trial. The said contention is covered by the decision of the Supreme Court in the case of ***State Vs.***

Pallulabid Ahmad Arimutta⁴, it is held that CDR details of the some of the accused or allegations of tampering of evidence by accused is an aspect that can be examined at the stage of trial. Hence statement given under Section 67 of the NDPS Act, 1985 cannot be considered at the stage of bail.

14. In view of the aforesaid *prima facie* observations qua each of the Applicants and their role and above judicial pronouncements, considering the long incarceration and Accused No. 4 having been granted bail, Applicants are entitled to bail on the ground of parity also, I am of the opinion that all four Applicants can be released on bail.

15. Hence, all four Bail Applications are allowed subject to the following terms and conditions:-

(i) All four Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- each with one or two sureties in the like amount;

(ii) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;

(iii) Applicants shall attend the trial Court on first Wednesday of every month between 11.00 a.m. and

4 SLP (Cri.) No. 3242 / 2022 dated 10.01.2022

1.00 p.m. to mark their presence. If the first Wednesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

(iv) Applicants 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 they do so, it will entitle the prosecution to apply for cancellation of this order;

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

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

(vii) Before their actual release from jail, Applicants shall furnish their address where they proposes to reside after their release from jail, to the concerned Police Station and also to the trial Court; and

(vii) In case of any infraction of the above conditions and / or two consecutive defaults in marking their attendance before trial Court, it shall attract the

provisions of Section 439(2) of Cr.PC. i.e. for cancellation of bail.

16. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall be adjudicated on the basis of the evidence led by the parties uninfluenced by the present order and strictly in accordance with law.

17. All four Bail Applications are allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

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