

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4612 OF 2024

Sanagala Sridhar Reddy ...Applicant
vs.
Union of India ...Respondent

Mr. Kushal Mor a/w. Mr. Rohan Chauhan, for the Applicant.
Mr. Siddharth Chandrashekhar a/w. Ms. Megha Bajoria, for Respondent
No.1- UOI.
Mr. P.P. Devkar, APP, for the Respondent no.2-State.

CORAM : N. J. JAMADAR, J.
DATE : FEBRUARY 12, 2025

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant (A7), who is arraigned in NDPS Special Case No.1506 of 2023, arising out of CR No.CIU/INV-23/2022-23/ACC(G), registered with Central Intelligence Unit, for the offences punishable under Sections 22(c), 23(c), 27A, 28, 29 and 30 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act, 1985") has preferred this application to enlarge him on bail.
3. On the basis of the intelligence input, one export consignment covered under Shipping Bill No.7996704 dated 23rd February, 2023 of M/s. First Wealth Solution destined to Yasoub Adam Hamdoun, Atalbara (A), Juba, South Sudan with declared description in shipping bill and in export invoice as 'Tamol-X-225' quantity as 21 packages containing 10.5

lakhs tablets, having gross weight 729 kg. and net weight 720 kg., was intercepted by the Central Intelligence Unit (CIU) Air Cargo Complex, Sahar, (ACC) and kept on hold, on 25th February, 2023, for 100% examination by the officers of CIU, ACC, Mumbai.

4. Gudipati (A1) was the Chief Operating Officer of M/s First Wealth Solution (First Wealth). As the chief consignor, Gudipati (A1) had placed the purchase order with M/s Safe Formulation Pvt Ltd (Safe Formulation), of which the Applicant (A7) was the Managing Director, to procure Tramadol Hydrochloride with brand name "Tamol-X". Gudipati (A1) forged the documents and invoices raised by Safe Formulation under which the said drug was supplied for export purpose only, to change the description from Tramadol Hydrochloride to Calcium Carbonate.

5. The role attributed to the Applicant (A7) is that being the Managing Director of Safe Formulation, the Applicant (A7) was in touch with Gudipati (A1). The Applicant (A7) met Gudipati (A1) at Bengaluru and in the factory premises of Safe Formulation. The Applicant was responsible for all the decisions relating to manufacture of Tramadol Hydrochloride. The Applicant allegedly connived with Gudipati (A1) in the diversion of Tramadol Hydrochloride by mis-declaring it as Magnesium Citrate and Calcium Carbonate. Despite being aware of said diversion, the Applicant did not take any action. The Applicant had seen the messages on the

WhatsApp group, especially the one that indicated that the invoices were raised in the name of M/s Iris Health Global Wellness Private Limited for the very product, which was delivered to First wealth. It thus appeared that the Applicant (A7) was privy to the export of Tramadol Hydrochloride disguised as Magnesium Citrate and Calcium Carbonate.

6. Mr. Mor, the learned Counsel for the Applicant, submitted that the indictment against the Applicant of being a confederate in the conspiracy to export the contraband substance is based on surmises and conjecture. The Applicant (A7), in the capacity of Managing Director of Safe Formulation, had obtained the requisite permission from the Drug Control Administration, Government of Andhra Pradesh, licences under the rules, including a licence to possess narcotic drugs and psychotropic substance. The Central Bureau of Narcotic had also issued the CBN registration number to Safe Formulation. Attention of the Court was invited to the documents which evidence the permissions solicited by the Safe Formulation to produce Tramadol Hydrochloride for First Wealth, on the basis of purchase order placed by First Wealth.

7. Mr. Mor, further urged that there is no material to show that the Applicant was privy to the alleged illegal export of Tramadol or a co-conspirator and, thus, invoke Section 29 of the NDPS Act. To buttress this submission Mr. Mor placed reliance on a Judgment of the Supreme Court

in the case of **Amarsingh Ramjibhai Barot Vs State of Gujarat**¹ and a decision of this Court in the case of **Aryan Shah Rukh Khan Vs Union of India & Anr.**²

8. At any rate, Mr. Mor would urge, the Applicant (A7) has been in custody since 20th April 2023. Trial is not likely to conclude in near future. Therefore, on the ground of long period of incarceration as well, the Applicant deserves to be enlarged on bail.

9. Mr. Chandrashekhar, the learned Special PP for the Respondent-Union of India resisted the prayer for bail. It was submitted that the statements of the co-accused and the witnesses recorded under Section 67 of the NDPS Act reveal that the Applicant (A7) was privy to the offences. Emphasis was laid on the fact that the invoices issued by Safe Formulation initially in the name of First Wealth (for the same goods), were changed in the name of M/s Iris Health Global Wellness. The Applicant (A7) was a member of the Whatsapp group, on which the chats to change the invoices were shared. As the Applicant (A7) was in day to day management of the affairs of the Safe Formulation and exercised complete control over the manufacturing activity of the contraband substance, the offences could not have been committed without the connivance of the Applicant.

1 (2005) 7 SCC 550.

2 2021 SCC OnLine Bom 4127.

10. In the backdrop of the nature of the indictment of the Applicant, in particular, the crucial question which warrants consideration, albeit *prima facie*, is, was the Applicant (A7) privy to the export of Tramadol Hydrochloride without export authorization? *Prima facie* it appears that the manufacture of Tramadol Hydrochloride by the Safe Formulation was in the regular course of business and in conformity with the licence requirement. *Prima facie* there is material to show that First Wealth had placed orders for manufacture of Tramadol Hydrochloride and after obtaining the requisite permission from the concerned authorities, Safe Formulation had manufactured Tramadol Hydrochloride. It seems that licence to manufacture was obtained on the basis of the purchase orders placed by the supplier.

11. The role attributed to the Applicant (A7), in the prosecution complaint, as articulated in paragraph 216 (pages 742 to 746 of the Application), appears to be premised on the alleged knowledge of the Applicant that Gudipati (A1) was illegally exporting the contraband substance. The circumstances of the Application (A7) being in touch with Gudipati (A1) and having seen the messages on the WhatsApp group “Safe Business”, were pressed into service.

12. *Prima facie*, the allegations appear to be inferential. The terms like “appears to be in connivance with the exporter” have been used in the indictment. The other material, in the form of the statements of the co-accused recorded under Section 67 of the NDPS Act, 1985, is of no assistance to the prosecution. In view of the pronouncement of the Supreme Court in the case of **Tofan Singh Vs State of Tamil Nadu**³ those statements cannot be used as a confession at the trial for the offences punishable under NDPS Act. Nor such statement made by one accused constitutes a legal evidence against another accused.

13. In ABA No. 1527 of 2024 (R. Kumar S/o Ramu Vs Union of India), this Court had an occasion to consider the liability of R. Kumar (A9), another manufacturer of Tramadol, for the illegal export of Tramadol Hydrochloride by Gudipati (A1). The observations in paragraph 14 to 16 of the said order read as under:

“14. *Prima facie*, I find it rather difficult to accede to the aforesaid submission of the learned PP. As noted above, manufacture and supply of the drug appeared to be with fullest possible disclosure to the concerned authorities. The name of the importer, the destination country, and the name of the supplier, were all disclosed. Manufacturing licence was obtained on the basis of the purchase order placed by the importer and supplier. It is true, there is an endorsement that the manufacturer is requested to obtain export authorization

3 (2021) 4 SCC 1.

from Narcotic Commission of India, CBN, Gwalior.

15. Whether this requirement emanates from the statutory prescription ? Sub-Rule (1) of Rule 58 undoubtedly prohibits export out of India of narcotic drugs or psychotropic substance without an export authorization. However, on a plain reading and Rule 58 of the NDPS Rules, 1985, it appears that the requirement to obtain authorization is that of the exporter.

16. In the case at hand, there is material to show that the KrebZ Healthcare Pvt. Ltd. raised invoices and delivered the product to the consignee M/s. First Wealth Solutions. The latter was the named supplier and exporter. Prima facie, it was the responsibility of the exporter to obtain the export authorization. The endorsement on the licence, therefore, cannot be construed in such a fashion as to fasten the criminal liability on the manufacturer who obtained the licence and manufactured the drug after the full disclosure of the purpose of the manufacture, the name of the importer and the supplier.”

14. In substance, whether the applicant can be roped in as co-conspirator in the illegal export of Tramadol by Gudipati (A1) on the basis of the statements of the co-accused and the witnesses under Section 67 of the NDPS Act, 1985, and the exchange of texts on the Whatsapp group (which was alleedly seen by the applicants), appears debatable. Thus, I am inclined to hold that the interdict contained in Section 37 of the Act, 1985, may not operate.

15. Moreover, the Applicant (A7) has been in custody since 20th April 2023. Having regard to the nature of accusation, number of accused and number of witnesses, which the prosecution may be required to examine, it is extremely unlikely that the trial can be concluded within a reasonable period. Thus, this incarceration of 22 months, without a realistic prospect of conclusion of the trial, in near future, also weighs in.

16. Resultantly, I am inclined to exercise the discretion in favour of the Applicant (A7).

17. Hence, the following order.

ORDER

1] The bail application stands allowed.

2] The applicant Sanagala Sridhar Reddy be released on bail in NDPS Special Case No.1506 of 2023, arising out of C.R. No.CIU/INV-23/2022-23/ACC(G), registered with Central Intelligence Unit, on furnishing a P.R. Bond in the sum of Rs.1,00,000/- (one lakh) with one or two sureties in the like amount to the satisfaction of the learned Special Judge.

3] The applicant shall mark his presence at the Central Intelligence Unit, between 10.00 am. to 12.00 noon, on first Monday of every alternate month, for the period of three years or till conclusion of the trial, whichever is earlier.

4] The applicant shall not tamper with the prosecution evidence. The

applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.

5] On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

6] The applicant shall not leave India without prior permission of the learned Special Judge.

7] The applicant shall regularly attend the proceedings before the jurisdictional Court.

8] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)