

Prasad R. Rajput

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3046 OF 2024

Akash Prem Panjwani	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

WITH
BAIL APPLICATION NO. 4705 OF 2024

Sameer Jetha Khatri @ Samya	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

WITH
BAIL APPLICATION NO. 4812 OF 2024

Rohit Ashokkumar Gupta @ Ravi	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Amit Singh a/w Mr. Hitesh Phulwani, Advocates for Applicants in BA No. 3046 of 2024 and BA No. 4812 of 2024.
 - Mr. Ayaz Khan a/w Ms. Zehra Charania, Mr Dilip Mishra and Ms. Mallika Sharma, Advocates for Applicant in BA No. 4705 of 2024.
 - Mr. Mayur S. Sonavane, APP for State in BA No. 3046 of 2024 and BA No. 4812 of 2024.
 - Mr. Balraj B. Kulkarni, APP for State in BA No. 4705 of 2024.
 - Mr. Pravin T. Khandare, PSI, Central Police Station (Ulhasnagar).

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 24, 2025

P. C.:

1. Heard Mr. Singh, learned Advocate for Applicants in BA No. 3046 of 2024 and BA No. 4812 of 2024; Mr. Khan, learned

Advocate for Applicant in BA No. 4705 of 2024; Mr. Sonavane, learned APP for State in BA No. 3046 of 2024 and BA No. 4812 of 2024 and Mr. Kulkarni, learned APP for State in BA No. 4705 of 2024. Common order is passed in all three Applications since they arise out of the same crime.

2. There are three accused who are the Applicants before me. Accused No.1 is Akash Panjwani who is Applicant in Bail Application No.3046 of 2024. Accused No.2 is Rohit Gupta who is Applicant in Bail Application No. 4812 of 2024 and Accused No.3 is Sameer Khatri who is Applicant in Bail Application No.4705 of 2024. They are indicted in Crime No.587 of 2024 registered with Central Police Station at Ulhasnagar, Thane under Sections 8(c), 22(b), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “NDPS” Act).

3. Briefly stated, according to prosecution during patrolling in the jurisdiction of Central Police Station near Vedanta College Box Cricket ground, next to Udyogvihar Company Compound, Vitthalwadi Station Road, Ulhasnagar 3, on 11.04.2024 at about 22.35 hours Accused No.1 (Akash Panjwani) was found sitting on his motorcycle in a suspicious manner. As soon as he saw the police raiding party, he attempted to flee away but the police raiding party intercepted him and took his personal search in the presence of panchas whereby he

was found to be in possession of contraband Mephedrone weighing 10 grams which came to be seized after complying with provisions of Section 50 of NDPS Act. Offence was registered and according to prosecution, Applicant- Accused No.1 confessed to having procured the contraband for sale from Accused No.2 (Rohit Gupta). Three days later on 14.04.2024, Accused No.2 was arrested. During custodial interrogation of Accused No.2, he revealed that he procured the contraband from Accused No.3 (Sameer Khatri). On 15.04.2024 Accused No.3 was arrested. Considering involvement of more than one person Section 29 was applied. Case of prosecution is that accused No.3 procured the contraband from a Nigerian citizen called Mr. Godwin through one Mr. Prashant Sonavane who are not traced. They are absconding co-accused. Investigation is complete and charge-sheet is filed.

4. For convenience Bail Application No. 4705 is referred to as it has all the relevant papers annexed thereto in the present case. The seized contraband is of intermediate quantity. Charge-sheet is appended at page No.8 of the Application. Perusal of charge-sheet reveals that there is involvement of another Co-accused called Prashant Sanjay Sonavane and the Nigerian citizen Mr. Godwin who are yet to be arrested. It is seen that prosecution is heavily relying on certain Whatsapp messages as well as online payment transaction

photos / screenshots to establish financial link between the accused which are appended to the charge-sheet from page No.77 onwards upto page No.144.

5. Mr. Sonavane, learned APP appears for the prosecution in Bail Application No.3046 of 2024 pertaining to Applicant - Accused No.1 and Bail Application No. 4812 of 2024 pertaining to Applicant - Accused No.2. Mr. Kulkarni, learned APP appears for the prosecution in Bail Application No.4705 of 2024 pertaining to Applicant - Accused No.3. For the sake of brevity, the submissions made by Mr. Sonavane and Mr. Kulkarni are taken together and stated herein. Both the learned APPs have vehemently opposed release on bail of the Applicants on the ground that Applicants are members of a gang of smugglers dealing with contraband and they are infact part of a much bigger network of agents and gang members involved in serious offences pertaining to circulation of contraband. Both APPs would submit that the offence committed by Applicants is serious as it leads to dragging youngsters in the habit of consuming narcotic drugs and psychotropic substances. They would submit that the Applicants do not deserve enlargement on bail since there is likelihood that they would repeat the offence and most importantly there is a possibility of they tampering evidence.

6. Applicants before me are represented by Mr. Khan in Bail Application No.4705 of 2024 and Mr. Singh in Bail Application Nos.3046 of 2024 and 4812 of 2024. Their submissions are also taken and noted together for brevity. Applicants have sought release on bail on the following grounds:-

(i) That no contraband has been seized or recovered from Accused No.2 and Accused No.3 and they are arrested merely on the basis of confessional statements recorded by prosecution of Accused Nos.1 and 2 respectively in custodial interrogation which is inadmissible in law as per Section 67 of the NDPS Act;

(ii) That the contraband recovered from Accused No.1 is merely 10 grams which is below commercial quantity and have rigours of Section 37 would not apply;

(iii) That Accused No.1 from whom the contraband is seized has not taken the name of Accused No.3;

(iv) That Accused No.3 is arrested merely on the basis of the statement of Accused No.2 which is a confessional statement and there is no other independent material to corroborate and *prima facie* show nexus of Accused No.3 to the statement made by

Accused No.2 and similarly there is no corroboration of the confessional statement of Accused No.1 in so far as Accused No.2 is concerned;

(v) That in terms of provisions of Section 25 of the Indian Evidence Act, 1872, the aforesaid statements are inadmissible in law;

(vi) That the only material referred to and relied upon by the prosecution are the Whatsapp chat messages and voice calls but there is nothing incriminating emanating from the same to show involvement and nexus of accused in the crime;

(vii) Lastly they would submit that there is non-compliance of the provisions of procedure contemplated under Section 52-A(2) of the NDPS Act readwith Rule 6 by the prosecution and most importantly there is no discovery of any incriminating material pursuant to the disclosure panchnama.

7. On the basis of the above submissions learned Advocates have prayed for grant of bail to the Applicants having regard to the above grounds coupled with the fact that Applicants have been in incarceration for almost 10 months.

8. I have perused the record of the case with the able assistance of the learned Advocates. *Prima facie*, it is seen that Accused Nos.1 and 2 have no criminal antecedents whereas Accused No.3 has 3 offences registered against him under NDPS Act in the past. The charge-sheet clearly shows involvement of the source of the alleged contraband in question namely a Nigerian national called Mr. Godwin and another person called Prashant Sanjay Sonavane who are absconding accused and yet to be arrested. The disclosure panchanama dated 16.04.2024 shows that Accused No.2 had taken the panchas to the spot from where he procured the contraband from Accused No.3 through Prashant Sanjay Sonavane but nothing was recovered. Thereafter on the following day the panchas were also taken to another spot i.e. the railway tracks near Mankhurd Railway Station from where the Nigerian national Mr. Godwin was operating but nothing was procured from there either. The certificate under Section 52-A(2) issued by the Magistrate records that the contraband contained in a plastic pouch and its weight alongwith the zipper lock plastic pouch was 10.01 grams. Considering the weight of the zipper lock and the plastic pouch the actual weight of the contraband would be a few grams less than what is stated in the said certificate. It is stated that the actual weight of the contraband was 8.4 grams.

9. The Whatsapp screenshots and online transaction screenshots exchanged between the parties show payment amounts made but none of the said chats/messages show or reveal anything incriminating relating to purchase of contraband or otherwise. Indictment of the Co-accused namely Accused Nos. 2 and 3 is merely on the basis of confessional statement of Accused No.1.

10. The Supreme Court in the case of *Zeeshan @ Datta Pavle Majidbhai Memon Vs. State of Gujarat*¹ in an identical case has enlarged the accused on bail. In that case the accused was not named in the FIR which pertained to recovery of 18.96 grams of Mephedrone and he was named as accused based upon the statement of the Co-accused upon which he was arrested and suffered incarceration for 8 months. Supreme Court held that in such circumstances wherein quantity recovered is not commercial but intermediate, rigours of Section 37 of NDPS Act is inapplicable. Equally under Section 67 of NDPS Act confessional statements are not admissible in evidence.

11. From the material on record, it is seen that disclosure statement of co-accused and Whatsapp voice calls and online payment transactions are the only material placed before the Court in the charge-sheet. In my opinion, the material placed before me is not sufficient to indict the Applicants in the present crime owing to lack of

1 SLP (Crl.) No.10317 of 2022 decided on 10.01.2023

any corroborative evidence which would deprive the personal liberty of Applicants before me when most importantly the real perpetrators of the crime in question are still absconding and have not been apprehended.

12. Even otherwise the interdict contained in Section 37 of the NDPS Act may not operate against any of the Applicants considering the fact that Accused Nos.1 and 2 have no antecedents and considering the quantity of contraband recovered and the only material against Accused No.3 being the confessional statement.

13. Reliance in this regard is also placed on the decision of the Supreme Court in the case of *Bharat Chaudhary Vs. Union of India*² which holds that reliance on printouts of Whatsapp messages downloaded from the mobile phone and devices of accused cannot be treated at the stage of bail as sufficient material to establish a live link between the accused as nothing incriminating is seen from those Whatsapp screenshots and voice calls.

14. Attention is also drawn to the decision of this Court in the case of *Aryan Shahrukh Khan Vs. The Union of India and Anr.*³ In paragraph No.10 with respect to charge of conspiracy it has been held that there has to be positive evidence about an agreement to do an

² (2021) 20 SCC 50

³ Criminal Bail Application No.3624 of 2021 decided on 28.10.2021

unlawful act or to do lawful act by unlawful means and such agreement must precede with meeting of minds. Paragraph 10 reads thus:-

“10] For inferring the act of hatching conspiracy on the part of the Applicants and other co-accused, there has to be positive evidence about an agreement to do an unlawful act or to do lawful act by unlawful means and such agreement must precede with meeting of minds.”

15. In view of the above observations and findings, a fit case for enlargement of all three Applicants before me is made out.

16. All three Applications stand allowed subject to the following terms and conditions:-

- (i) 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) Applicants shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 am to 12:00 pm initially for three months and thereafter as and when called;
- (iii) 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;

- (iv)** Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court; Applicants shall deposit their passport, if any, with the Investigating Officer within a period of one week of their release from prison;
- (v)** Applicants shall not influence any of the witnesses or tamper with the evidence in this case in any manner;
- (vi)** Applicants shall keep the Investigating Officer informed of their current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;
- (vii)** Any infraction of the above conditions shall entail the prosecution to seek cancellation of this order.

17. By way of abundant caution it is clarified that observations made herein above are confined for the purpose of determination of entitlement for bail in these Applications and they may not be construed as an expression of opinion on the guilt or otherwise of the Applicants and the Trial Court shall not be influenced by any of the observations made herein above.

18. All three Bail Applications stand allowed and disposed.