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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 4716 OF 2024

Bashir Kamruddin Sayyed

.. Applicant

Versus

Union of India and Anr.

.. Respondents

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- Mr. Kamlesh Satre, Advocate for Applicant.
 - Ms. Manisha Jagtap, Special PP for Respondent No.1 – Union of India.
 - Ms. Shilpa K. Gajare – Dhumal, APP for Respondent No.2 – State.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 07, 2025.

P.C.:

1. Heard Mr. Satre, learned Advocate for Applicant and Ms. Jagtap, Special PP for Respondent No.1 – Union of India and Ms. Gajare – Dhumal, learned Advocate for Respondent No.2 – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with NDPS Special Case No.1636 of 2024 in NCB F. No. NCB/MZU/CR – 03-2024 for offences punishable under Sections 8(c), 20(b)(ii)(c) , 27, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “**NDPS Act**”).

3. There are total four Accused in the present case. Applicant before the Court is Accused No.3 in a case of chance recovery.

Prosecution confiscated and seized 16 kgs and 15 kgs of the alleged contraband *ganja* from Accused Nos.1 and 2 while on duty at Lokmanya Tilak Terminus Railway Station. In the disclosure statement of Accused No.1, he has made a confessional statement and disclosed name of Accused No.3 namely Applicant before me as being involved in criminal conspiracy. Both Accused Nos.1 and 2 during their enquiry under Section 67 of the NDPS Act have disclosed that the alleged contraband was to be delivered to Accused Nos.3 and 4 respectively. Prosecution recorded the statement of Accused No.3 – present Applicant and Accused No.4.

4. According to prosecution, in the confessional statement since Applicant admitted to the crime, case was registered against him. Case of prosecution against Applicant is based on two grounds, firstly on the basis of confessional disclosure statement of co-accused persons and secondly on the basis of CDR stating that Applicant was in regular contact with other co-accused persons with respect to and regard to trafficking of the alleged contraband.

5. Mr. Satre, learned Advocate for Applicant would submit that under the provisions of Section 67 of the NDPS Act, disclosure statement of the co-accused persons recorded before NDPS officers cannot be considered as evidence to indict the Applicant unless there is corroborative evidence to show direct nexus and involvement of the

Applicant in trafficking of the alleged contraband. He would submit that mere arguing that CDR *per se* between co-accused persons is relied upon is not good enough since the transcripts of those CDRs are not produced to establish nexus of Applicant with other co-accused persons from whom confiscation of alleged contraband has been made.

5.1. He would submit that apart from the voluntary confessional statement of Applicant, there is no incriminating material whatsoever neither recovery of alleged contraband has been effected from Applicant which needs into taken account by Court for purpose of grant of bail. He would submit that Applicant is a rickshaw driver by profession and has been incarcerated in prison for the past more than 1 year and 1 month.

6. *PER CONTRA*, Ms. Jagtap, learned Special PP appearing on behalf of Respondent No.1 – Union of India has drawn my attention to the Affidavit-in-Reply dated 07.02.2025. She would submit that voluntarily confessional statement of Applicant in the present case admits his guilt and involvement in the conspiracy for procurement, possession, interstate transportation and trafficking of alleged contraband which has been recovered from Accused No.1 and thus he is arrested in the present case.

6.1. She would submit that the alleged contraband was ordered and booked by the present Applicant which was supposed to be

delivered to him and Accused Nos.1 and 3 were mere transporters of alleged contraband. She would submit that in so far as trafficking of alleged contraband is concerned, Applicant was in constant touch with Accused Nos.1 and 2 and in that regard she would place reliance on the CDRs to argue and corroborate Applicant's involvement in the present crime. She would submit that CDRs *prima facie* substantiate involvement of Applicant in the crime for trafficking alleged contraband and thus brings out presence of a culpable mental state and invocation of Section 35 of the NDPS Act. She would fairly submit that no conscious recovery of alleged contraband has been recovered from Applicant and in all fairness transcripts of CDRs are not placed on record.

6.2. She would submit that stringent provisions of Section 37 of the NDPS Act would apply in the present case if confiscation of total quantity of alleged contraband from all accused persons is considered.

6.3. She would refer to and rely upon the decisions in the case of *Hira Singh and Anr. Vs. Union of India and Anr.*¹ and *Narcotics Control Bureau (NCB) Vs. Kashif*². She has drawn my attention to paragraph Nos.10.2 to 10.5 in the case of *Hira Singh and Anr.* (1st Supra) and which read thus:-

"10.2. Therefore, considering the Statement of Objects and Reasons and the Preamble of the NDPS Act and the relevant

¹ (2020) 20 SCC 272

² Cri. Appeal No.5544 of 2024 decided on 20.12.2024 (Supreme Court)

provisions of the NDPS Act, it seems that it was never the intention of the legislature to exclude the quantity of neutral substance and to consider only the actual content by weight of offending drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity. Right from sub-clause(vii-a) and (xxiii-a) of Section 2 of NDPS Act, emphasis is on Narcotic and Drug or Psychotropic Substance (Sections 21, 22, 23, 24, 27 and 43). Even in the table attached to the Notification dated 19.10.2001, column 2 is with respect to name of Narcotic Drug and Psychotropic Substance and columns 5 and 6 are with respect to “small quantity and commercial quantity”. Note 2 of the Notification dated 19.10.2001 specifically provides that quantity shown against the respective drugs listed in the table also apply to the preparations of the drug and the preparations of substances of Note 1. As per Note 1, the small quantity and commercial quantity given against the respective drugs listed in the table apply to isomers ..., whenever existence of such substance is possible. Therefore, for the determination of “small quantity or the commercial quantity” with respect to Narcotic Drugs and Psychotropic Substance mentioned in Column 2 the quantity mentioned in the Clauses 5 and 6 are required to be taken into consideration. However, in the case of mixture of the narcotic drugs / psychotropic drugs mentioned in column no.2 and any mixture or preparation that of with or without the neutral material of any of the drugs mentioned in table, lesser of the small quantity between the quantities given against the respective Narcotic Drugs or Psychotropic Substances forming part of mixture and lesser of commercial quantity between the quantities given against the respective narcotic drugs or psychotropic substance forming part of the mixture is to be taken into consideration. As per example, mixture of 100 gm is seized and the mixture is consisting of two different Narcotic Drugs and Psychotropic Substance with neutral material, one drug is heroin and another is methadone, lesser of commercial quantity between the quantities given against the aforesaid two respective Narcotic Drugs and Psychotropic Substance is required to be considered. For the purpose of determination of the “small quantity or commercial quantity”, in case of entry 239 the entire weight of the mixture / drug by whatever named called weight of neutral material is also required to be considered subject to what is stated hereinabove. If the view taken by this Court in the case of *E. Micheal Raj (Supra)* is accepted, in that case, it would be adding something to the relevant provisions of the statute which is not there and/or it was never intended by the legislature.

10.3. At this stage, it is required to be noted that illicit drugs are seldom sold in a pure form. They are almost always adulterated or cut with other substance. Caffeine is mixed with heroin, it causes that heroin to vaporize at a lower rate. That could allow users to take the drug faster and get a big punch sooner. Aspirin, crushed tablets, they could have enough powder

to amend reversal doses of drugs. Take example of heroin. It is known as powerful and illegal street drug and opiate derived from morphine. This drug can easily be “cut” with a variety of different substances. This means that drug dealer will add other drugs or non-intoxicating substances to the drug so that they can sell more of it at a lesser expense to themselves. Brown-sugar / smack is usually made available in power form. The substances is only about 20% heroin. The heroin is mixed with other substances like chalk powder, zinc oxide, because of these, impurities in the drug, brown-sugar is cheaper but more dangerous. These are only few examples to show and demonstrate that even mixture of narcotic drugs or psychotropic substance is more dangerous. Therefore, what is harmful or injurious is the entire mixture/tablets with neutral substance and Narcotic Drugs or Psychotropic Substances. Therefore, if it is accepted that it is only the actual content by weight of offending drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, in that case, the object and purpose of enactment of NDPS Act would be frustrated. There may be few punishment for “commercial quantity”. Certainly that would not have been the intention of the legislature.

10.4. Even considering the definition of “manufacture”, “manufactured drug” and the “preparation” conjointly, the total weight of such “manufactured drug” or “preparation”, including the neutral material is required to be considered while determining small quantity or commercial quantity. If it is interpreted in such a manner, then and then only, the objects and purpose of NDPS Act would be achieved. Any other intention to defeat the object and purpose of enactment of NDPS Act viz. to Act is deterrent.

10.5. The problem of drug addicts is international and the mafia is working throughout the world. It is a crime against the society and it has to be dealt with iron hands. Use of drugs by the young people in India has increased. The drugs are being used for weakening of the nation. During the British regime control was kept on the traffic of dangerous drugs by enforcing the Opium Act, 1857. The Opium Act, 1875 and the Dangerous Drugs Act, 1930. However, with the passage of time and the development in the field of illicit drug traffic and during abuse at national and international level, many deficiencies in the existing laws have come to notice. Therefore, in order to remove such deficiencies and difficulties, there was urgent need for the enactment of a comprehensive legislation on Narcotic Drugs and Psychotropic Substances, which led to enactment of NDPS Act. As observed herein above, the Act is a special law and has a laudable purpose to serve and is intended to combat the menace otherwise bent upon destroying the public health and national health. The guilty must be in and the innocent ones must be out. The punishment part in drug trafficking is an important one but its preventive part is more important. Therefore, prevention of

illicit traffic in Narcotic Drugs and Psychotropic Sub stances Act, 1988 came to be introduced. The aim was to prevent illicit traffic rather than punish after the offence was committed. Therefore, the Courts will have to safeguard the life and liberty of the innocent persons. Therefore, the provisions of NDPS Act are required to be interpreted keeping in mind the object and purpose of NDPS Act; impact on the society as a whole and the Act is required to be interpreted literally and not liberally which may ultimately frustrate the object, purpose and preamble of the Act. Therefore, the interpretation of the relevant provisions of the statute canvassed on behalf of the accused and the intervener that quantity of neutral substance (s) is not to be taken into consideration and it is only actual content of the weight of the offending drug, which is relevant for the purpose of determining whether it would constitute “small quantity or commercial quantity”, cannot be accepted.”

6.4. Next she has drawn my attention to paragraph Nos.39 of the decision in the case of ***Narcotics Control Bureau*** (2nd *Supra*) which reads thus:-

“39. The upshot of the above discussion may be summarized as under:

- (i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.*
- (ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.*
- (iii) The purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the Narcotic drugs and psychotropic substances.*
- (iv) Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural*

irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

- (v) *Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.*
- (vi) *Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.”*

6.5. She would submit that the effect of drugs menace in Society is such that the Court will have to take a holistic view while considering case for bail of Applicant primarily because there is a chance that he will re-offend himself, if he is let out on bail considering his past conduct. She would submit that what is held in the aforementioned decisions falls true as once it is primarily found that Applicant is involved in the present crime having been so disclosed by Accused Nos.1 and 3 who were supposed to deliver the alleged contraband to him, Applicant should not be let out on bail. She has also referred to and relied upon paragraph Nos.6 and 7 of the decision of the Supreme Court in the case of ***Narcotics Control Bureau Vs. Kashif*** (2nd Supra) to highlight the objects of the NDPS Act and contend that provisions of the said Act are required to be interpreted keeping in mind the object and purpose of the NDPS Act and the

impact on Society as a whole and the Act will have to be applied literally and not liberally which may ultimately frustrate its object. She would submit that even if alleged contraband recovered in the present case is of intermediate quantity i.e. below commercial quantity still it does not rule out the fact that it has been recorded and involvement of Applicant in the present crime cannot be ruled out. Hence, she would submit that present Application be rejected.

7. I have heard the learned Advocates at the bar and with their able assistance perused the record of the case.

8. *Prima facie*, it is seen that prosecution case against Applicant is based on three grounds; firstly disclosure of name of Applicant in the statement of co-accused person namely Accused No.1; secondly on the basis of CDRs alleging that Applicant was in constant contact with other co-accused persons and thirdly on the ground that the alleged contraband was required to be delivered by Accused Nos.1 to Accused No.3 as per his statement made in enquiry under Section 67 of the NDPS Act.

9. In so far as the present facts are concerned, admittedly there is no conscious recovery of any contraband from the Applicant. Applicant is arrested on the basis of disclosure statement made by Accused No.1 that the said contraband was required to be delivered to him. Apart from the said disclosure statement there is no other

incriminating material to corroborate the said fact, even the CDR analysis referred to and relied upon by prosecution is merely on the basis of list of phone calls made without its transcripts being produced on record to show direct nexus or involvement of Applicant in procurement of the alleged contraband.

10. The Supreme Court in the case of *Tofan Singh Vs. State of Tamil Nadu*³ 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 are inadmissible as evidence to protect fundamental rights under Articles 20(3) and 21 of the Constitution of India.

11. In the case of *Phundreimayum Yas Khan Vs. State (NCT of Delhi)*⁴ 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

³ (2021) 4 SCC 1
⁴ 2023 SCC OnLine 135

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.”

12. In the case of *Jasbir Singh Vs. Narcotics Control Bureau*⁵ 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 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 CrI. 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

5 (2023) SCC OnLine Del 134

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.”

13. In the case of *State Vs. Pallulabid Ahmad Arimutta*⁶, the Supreme Court 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.

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

14. In view of the aforesaid *prima facie* factual aspects and the law laid down by the Supreme Court, Applicant can be enlarged on bail. Hence, Application stands allowed.

15. Apprehension expressed by Ms. Jagtap, learned Special PP can be taken care of by imposing appropriate conditions.

16. Hence, 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.50,000/- 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;
- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 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 is directed to stay outside the jurisdiction of Mumbai City and the Mumbai Suburban District for a period of 6 months and he shall be entitled to enter the jurisdiction only for the purpose of attending the Investigating Officer as directed herein and for attending the trial on the scheduled dates of hearing in the Court;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and
- (ix) 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.

17. 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.

18. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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