

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4802 OF 2024

Parminder Kumar Sharma

.. Applicant

Versus

Union of India & Anr.

.. Respondents

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- Mr. Sherali S. Khan, Advocate for Applicant
- Mr. Shreeram Shirsat, Special PP for Respondent No. 1
- Mr. Rushikesh M. Pethe, APP for Respondent No. 2

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 15, 2025

P. C.:

1. Heard Mr. Khan, learned Advocate for Applicant; Mr. Shirsat, learned Special PP for Respondent No. 1 - Union of India and Mr. Pethe, learned APP for Respondent No. 2 - State.

2. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.P.C.**") read with Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "**BNSS**") in connection with Crime No. NCB/MZU/Cr.No.34/2023 registered with Narcotics Control Bureau, Mumbai Zone Unit, Mumbai for the offences punishable under Sections 8(c) r/w Sections 22(c), 23(c), 28 and 29 of the Narcotic Drug and Psychotropic Substances Act, 1985 (for short "**NDPS Act**"). Applicant is arrested on 19.12.2023.

3. The case of the prosecution as against the Applicant before me is based on the statement of the co-accused persons and CDR link as argued by Mr. Shirsat. He has placed on record the affidavit in reply filed on behalf of Respondent No. 1 – NCB by Mr. Santu Saha, the Investigating Officer (IO) in the present crime and would contend that merely because there has been no effective recovery of the alleged contraband from the Applicant, it cannot by itself establish his innocence so as to entitle him to bail particularly in view of his alleged complicity and close proximity with the co-accused persons involved in the said offence. He would persuade the Court to consider the fact that Applicant before the Court had booked a hotel room in which he had stationed himself along with the alleged contraband which was supplied to the co-accused persons who were arrested in the present case. The fact that the case of the prosecution against the Applicant is primarily based upon the statement of the co-accused person namely Mr. Ganesh Mishra from whose conscious possession the alleged contraband has been recovered by prosecution is undisputed. That apart the question raised by the Court in its previous order dated 07.04.2025, *inter alia*, pertaining to nomenclature of the seized contraband being 'Amphetamine' at the time of seizure but during forensic, the C.A. report identifies the same as 'Ephedrine' is endorsed by the prosecution as it is borne out from

the record. Both the learned Advocates are *ad idem* when they inform the Court that rigours of Section 37 in that regard would not apply to the present case.

4. Having considered the facts borne out from the record in the present case, it is *prima facie*, seen that there is no conscious recovery of any alleged contraband from the present Applicant, his indictment and arrest is solely based upon the statement of the co-accused person who has disclosed his name as the supplier of contraband.

5. The case of the Applicant stands fully covered by the decision of the Supreme Court in the case of ***Tofan Singh Vs. State of Tamil Nadu***¹ insofar as reliance on statement of co-accused person in the enquiry under Section 67 is concerned for indictment. In the said decision, Supreme 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

1 (2021) 4 SCC 1

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.

6. In the case of *Vikramjit Singh Vs. Narcotics Control Bureau*² the Delhi High Court found no admissible evidence linking Applicant directly to the contraband. It noted that disclosure statement of the person from whose house the drugs were recovered did not implicate the Applicant and was thus inadmissible under law as such a confession is hit by Section 25 of Indian Evidence Act, 1872.

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

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² BA No. 4268 of 2024 decided on 14.01.2025

³ (2023) SCC OnLine Del 134

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 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.”

8. That apart the other submission made by Mr. Shirsat which is emanating from the affidavit in reply of the prosecution pertains to reliance on the CDR to argue complicity of the Applicant in committing the crime. Prosecution may be right that the Applicant

and other co-accused may be in touch with each other but merely placing the CDR on record would not entitle the prosecution to oppose the Bail Application considering that it does not establish any live link to prove the complicity of Applicant in trafficking of the alleged contraband in question. In that regard, the decision in the case of ***Phundreimayum Yas Khan Vs. State (NCT of Delhi)***⁴ the Delhi High Court is relevant wherein it is 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.”

9. In view of the aforesaid *prima facie* observations and circumstances *qua* the Applicant before me referred to herein above and the above citations being applicable, Applicant can be released on bail. Hence, Application is allowed subject to the following terms and conditions:-:-

4 2023 SCC OnLine 135

- (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;
- (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 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; and

(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.

10. 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.

11. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
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