

Amberkar

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

BAIL APPLICATION NO.5216 OF 2024

Maheswaran Thondappa Rajgopal

.. Applicant

Versus

Union of India & Anr.

.. Respondents

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- Mr. Dilip Mishra a/w Ayaz Khan, Ms. Zehra Charania & Ms. Mallika Sharma, Advocates for Applicant.
- Ms. Ruju Thakker a/w Mr. Priyanshu Doshi, Advocates for Respondent No.1.
- Mr. Sukanta A. Karmakar, APP for Respondent No.2 – State.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 29, 2025

P. C.:

1. This is an Application seeking Regular Bail filed under Section 439 of Code of Criminal Procedure, 1973. The Application is placed under the caption of “**First on board**” by virtue of the order dated 08.01.2025 whereby APP was directed to submit medical reports of the Applicant since he asserts to have been suffering from certain ailments. I have perused the report submitted by Mr. Karmakar. The reports do not suggest the Applicant to be shifted to another facility or undergo any such treatment which cannot be rendered in the current set-up, the report further goes on to state: “*He can carry out his activities without assistance*”. However since the Applicant is a senior

citizen aged 70 years and is incarcerated for more than 1 year and 11 months, I am inclined to hear & dispose this matter.

2. The prosecution story commences from an intelligence information received by Respondent-authority revealing the Applicant's name and stating that he would be arriving at CSMI Airport with certain prohibited substances, acting upon the intelligence, the Applicant was intercepted and taken for detailed examination where it was found that he was in possession of a total of 10.13 kilograms of a yellowish substance purporting to be Heroin in two pouches concealed in the cavity of his travel bag. The substance in one of the bags was found to be tested positive for Diacetylmorphine and the substance in the other bag was found to be a cutting agent commonly used for cocaine trafficking.

2.1. It is also the case of prosecution that during course of interrogation the Applicant confessed that he was about to deliver the said contraband to a person in a hotel located at Masjid Bunder. Pursuant to knowledge of the said confession, a trap was set up by the authorities where a hotel room was booked in the name of the Applicant at the said hotel. Subsequently, Accused No.2, who is a Nigerian national was intercepted with certain *challans* and Rs.1,58,000/- in cash while he was attempting to take custody of the

subject matter / baggage as described by Applicant during his interrogation.

3. Mr. Mishra, learned Advocate appearing on behalf of Applicant would submit at the outset that the Applicant is a senior citizen aged about 70 years and has been suffering from various ailments. He would state that even if the medical condition of the Applicant is ignored momentarily since the reports of Sir JJ Hospital are not supporting his cause, his case would still meet the threshold of standards followed by Courts across the country to grant bail to accused in cases of similar nature, the reason being four fold:-

(i) The aspect of **incarceration** of 1 year, 10 months and 10 days of Applicant without the possibility of trial being concluded in the near future,

(ii) Material aspects of **non-compliance or discrepancies** on part of authorities which are, *inter alia*, violation of Section 50 of Cr.PC., Mixing of contraband, Manipulation and Tampering of contraband with respect to the second seizure,

(iii) Ground of **Parity** since Accused No.2, a Nigerian National Mr. Michael Onyeka Jude has been enlarged on bail and

(iv) That there are two contradictory reports of two forensic laboratories of the State; one rejecting presence of contraband and the second showing its presence.

4. Ms. Thakker, learned Advocate appearing on behalf of Respondent – DRI has drawn my attention to the Affidavit-in-reply dated 13.01.2025 filed by Samir S. Patil, Dy. Director DRI, Mumbai. At the outset, he would refute the ground of parity harped by the learned Advocate for Applicant by stating that both the co-accused are not similarly placed in so far as their acts and allegations are concerned and hence the said ground would be inapplicable. She would further submit that the charges attracted against Applicant are of a very serious nature involving a drug trafficking connivance that transcends international borders. He would submit that the prosecution version is based upon the voluntary statement of Accused under Section 67 of the N.D.P.S. Act and is further corroborated by the statement of co-accused as well as the bank account details of Applicant. She would submit that it is a common practice among drug traffickers to employ old age local citizens to avoid any whiff of suspicion and granting bail primarily on such grounds would defeat the purpose of the The Narcotic Drugs And Psychotropic Substances, Act, 1985 (for short **“the Act / N.D.P.S. Act”**) which lays down stringent conditions on granting bail by virtue of Section 37 of the said Act which also is attracted in

the present case as well. She would hence pray for rejection of Application.

4.1. Ms. Thakker has placed before me the decision of this Court with respect to rejection of Bail Application of accused No. 2 in the present crime in Criminal Application No. 1142 of 2023 (*Michael Onyeka Jude Vs. Directorate of Revenue Intelligence & Anr.*) dated 27.10.2023 (Coram : Sarang V. Kotwal, J.). She would draw my attention to paragraph No. 14 of the said decision wherein this Court has taken into account the time gap between rejection of the original sample and application of DRI for seeking leave of the Court for testing of duplicate sample within four days. She would submit that the decision of the Supreme Court in the case of *Thana Singh Vs. Central Bureau of Narcotics*¹ has a persuasive value in the case of retesting and resampling of the contraband in question and whenever such retesting is done, the Court will have to consider the aspect of delay. The submissions which are advanced by Ms. Thakkar would not apply to the Applicant's case before me. This is because seeking retesting of the contraband substance is a valuable right given to the Applicant in the event if the original sample is tested positive and that is the precise reason as to why the duplicate sample is drawn under the rules after seizure.

1 Criminal Appeal No. 1640 of 2010 decided on 23.01.2023

4.2. Next Ms. Thakkar would refer to and rely upon the decision of the single Bench of Delhi High Court in the case of ***Athar Parvez Vs. Narcotics Control Bureau*** in Bail Application No. 1914 of 2015 decided on 31.05.2016 (Coram : S.P Garg, J.) and would submit that in that case also, similar situation had arisen. However the facts in this case are different than the facts in the present case. The facts enumerated in paragraph No. 3 of the aforesaid decision are clearly distinguishable. In the present case, an open and shut case is presented before the Court where the original sample is tested completely negative by the first report dated 30.06.2023 and therefore the DRI sought retesting of the duplicate sample and the second report is made available on 08.08.2023. Supreme Court has clearly held that the effect of a contradictory report must be gone into only at the time of trial. In the present case the second report being a contradictory report would have to be decided only at the trial.

5. Mr. Karmakar, learned APP appearing on behalf of State would restrict his submissions in a narrow compass by stating that the location where the drug was supposedly to be delivered by the Applicant is situated in an area which is a hot bed for such illicit activities, significantly impacting the youth and sociology-economic fabric of the society at large to an extent that the ill-effects are readily apparent to even a cursory observer.

6. I have heard Mr. Mishra, Ms. Thakker and Mr. Karmakar and with their able assistance perused the record of the case. I have also gone through the citations submitted by Mr. Mishra but they along with the detailed submissions do not find a mention here since I have restricted my recording and finding on the aspect material for adjudicating the Bail Application. The aforesaid view is in light of the view of the Supreme court in the case of ***State of Bihar v. Rajballav Prasad***² where the Court observed the following:-

“15. We may also, at this stage, refer to the judgment in Puran v. Rambilas [Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124], wherein the principles while dealing with application for bail as well as petition for cancellation of bail were delineated and elaborated. Insofar as entertainment of application for bail is concerned, the Court pointed out that reasons must be recorded while granting the bail, but without discussion of merits and demerits of evidence. It was clarified that discussing evidence is totally different from giving reasons for a decision. This Court also pointed out that where order granting bail was passed by ignoring material evidence on record and without giving reasons, it would be perverse and contrary to the principles of law. Such an order would itself provide a ground for moving an application for cancellation of bail. This ground for cancellation, the Court held, is different from the ground that the accused misconducted himself or some new facts call for cancellation.”

7. This is not a stage where court will take into consideration submission of prosecution that judgement of conviction is possible and accused should be denied bail. The report of New Custom House, Mumbai of Government of India, Ministry of Finance dated: 30.06.2023 appended at page Nos. 124 and 127 clearly states that the original sample of contraband does not contain ‘Heroin’ i.e.

² (2017) 2 SCC 178

Diacetylmorphine. However, a second report dated: 08/08.2023 of the duplicate sample issued by the Central Forensic Science Laboratory, Talegaon, Pune states that Diacetylmorphine has been detected in the duplicate sample. Thus at this stage, Court is faced with two diametrically opposite CA Reports by two State Forensic Laboratories of the samples drawn in respect of the Applicant's contraband in question and hence there exists a clear difference of opinion expressed by the two reports. The Supreme Court in the case of ***Sami Ullaha v. Superintendent, Narcotic Central Bureau***³ has held that when two views are possible on account of contrary CA Reports, the view which leans in favor of the Applicant must be favored. Record shows that the Applicant is 70 years old and infirm as also suffering from medical ailments.

8. In view of the above reasons and submissions made by Mr. Mishra, Applicant is entitled to bail on the following terms & conditions:-

- (i) Applicant – Maheswaran Thondappa Rajgopal is directed to be released from prison in connection with Special Case No. 1471/2023 (NDPS) registered with the Session and Special NDPS Court, Mumbai;
- (ii) Applicant is directed to be released on bail on furnishing P.R. Bond of Rs.25,000/- (Rs. Twenty Five

³ Cri. Appeal No.1748 of 2008 (Arising out of SLP (Cri.) No.2175 of 2008)

Thousand only) with one or two sureties of the like amount;

(iii) Applicant shall report to the Investigating Officer, DRI as and when called;

(iv) 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;

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

(vi) Applicant shall keep the Investigating Officer, DRI informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable; and

(x) Any infraction of the conditions in this order shall entail the prosecution for cancellation of bail granted to Applicant.

9. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Amberkar

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
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